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SUPREME COURT OF THE UNITED STATES,

NO. 179.

JOSHIA GARLAND, PL'FF IN ER.

VS.

WILLIAM WYNN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

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STATE OF ARKANSAS, }
IN THE SUPREME COURT. } ss.

Be it remembered, that at a Supreme Court of the State of Arkansas, begun and held at the Court House in the city of Little Rock, on the first Monday of July, A. D. 1855, and on Saturday the 4th day of August, of said term, before the Hon. Elbert A. English, Chief Justice, and the Hon. Christopher C. Scott, and Hon. David Walker, Judges of said Court, were the following proceedings in the case of

WILLIAM WYNN, Appellant, }
vs. } Appeal from Lafayette Circuit Court in Chancery.
JOSIAH GARLAND, Appelle. }

Be it remembered, that heretofore, to wit: on the 8th day of July, A. D. 1852, the said Appellant filed in the office of the Clerk of said Supreme Court, the transcript of the record in said cause, which is in the following words:

"STATE OF ARKANSAS, *County of Lafayette.*

WILLIAM WYNN, Complainant, }
vs. } Bill for injunction.
JOSIAH GARLAND, Defendant. }

Pleas before the Honorable Christopher C. Scott, Judge of the eighth judicial circuit in the State of Arkansas, who by virtue of special arrangement, interchanged circuits with the Honorable George Conway, Judge of the sixth judicial circuit, to wit, at a circuit court in the chancery, begun and holden in and for the County of Lafayette, in the State of Arkansas, at the Court House in the Town of Lewisville, on the first Monday in July, in the year of our Lord, one thousand eight hundred and forty-seven, being the fifth day of said month, present the Honorable Christopher C. Scott, Judge and Chancellor as aforesaid, the following proceedings were had to wit:

WILLIAM WYNN,
vs.
JOSIAH GARLAND.

Came William Wynn, and on leave asked and obtained, files his

bill of complaint and for injunction against Josiah Garland, and his Exhibits A No. 1. and C No. 3, and gives notice to the attorney of said Garland of the filing of his said bill, which notice is accepted, and he also tenders his bond for injunction. This motion is set for argument on Monday Morning.

(*Copy of Bill.*)

STATE OF ARKANSAS, *County of Lafayette.* } In the Lafayette Circuit Court, July Term, 1847.

To the Honorable Christopher C. Scott, Judge of the Lafayette Circuit Court in Chancy sitting.

Humbly complianing, your Orator, William Wynn, would respectfullo show unto your honor that one Massach H. Jones some time in the year 1821 or 1822, as your orator has been informed and believes, removed and settled upon a portion of the public lands of the United States, then unsurveyed, lying and being in the County of Lafayette, in the State of Arkansas, on the south side of Red River, on what is generally called and known as Fisher's Prairie, and immediately commenced fencing land, building houses, and making other settlements and improvements thereon sustable for farming purposes, and enclosed and cultivated a large farm, upon which he resided and had possession, and cultivated the same until some time in the year 1833, when said Jones sold the same, together with all the rights by him acquired by virtue of his said settlement and improvement to one Joseph Jones, and then and there delivered possession of said farm and improvements to the said Joseph Jones, for and in consideration of a large sum of money; and the said Joseph Jones, immediately placed a large number of slaves, stock, and tools, necessary to be used, for farming purposes, and had, and used and cultivated said farm, and held and retained possession thereof, without any notice of an adverse claim or right of pre-emption on the part of any one except the said Massach H. Jones, so far as your orator was informed and believed, at the time he made the purchase of the said Joseph Jones, as will be hereinafter more fully mentioned, and that the said Joseph Jones, after his said purchase, made thereon lasting improvements of great value, and the said Joseph Jones, afterwards, in the year 1835, being in undisputed possession of the same, sold the same, together with all the privileges and appurtenances thereunto belonging, and certain negroes, stock, and farmiug tools upon and appertaining to said to your orator, for the sum of sixty thousand dollars, and then delivered the possession of the said farm to your orator who has used, cultivated and possessed the same, and for a great part of the time, actually resided thereon from the time of his said purchase to the present day. And your orator further shows that some time in the year 1840 the United States caused the said Townships, in which said farm and improvements

situated, to be surveyed, preparatory for sale, and that by said survey the numbers and description of the lands upon which said farm and improvements were situated was ascertained. And your orator further shows that a part of said farm improvements and betterments, were and are upon the North-east quarter of section eighteen, in Township sixteen south of range twenty-five west, in the District of land, subject to sale at Washington, Arkansas, to wit: the dwelling house, lands, negro cabins, and other out buildings, and about fifty acres of land, cleared and cultivated. And your orator would further show, that on the 29th day of November, A. D. 1842, your orator, with his witnesses appeared before the Register and Receiver at the Land Office, at Washington, aforesaid, and then and there proved up and established his right of pre-emption, in and to said quarter section *in his own right of pre-emption in and to said quarter section in his own right* under the pre-emption act, of 1838. And the Register and the Receiver at the Land Office at Washington, Hempstead County, admitted your orator's right of pre-emption to the said quarter section under the said act, of Congress of 1838. An authenticated copy of said affidavits, proof, and the proceedings therein, is herewith filed, marked A. No. 1, and made a part of this bill. And your orator having paid to the Receiver of public money at Washington, the Government price for said quarter section received his certificate and receipt therefor, a copy of which said certificate is herewith exhibited, marked "B. No. 2," and is made a part of this bill. And your orator further states, that by virtue of the proof of his right of pre-emption to said quarter section, the payment of the purchase money aforesaid, and the Receivers receipt aforesaid, your orator was entitled to a patent from the Government of the United States, and would have obtained one from said quarter section, if he had not been prevented from doing so, by the fraudulent and dishonest contrivances of one Josiah Garland, by whose procurement, a right of pre-emption was proven up in the name of one Samuel Hemphill, upon the said quarter section under the prior pre-emption law of 1830, when, as your orator verily believes and avers and charges it to be true that the said Samuel Hemphill was not entitled to any right of pre-emption under the pre-emption law of 1830. Your orator has been also informed, and verily believes, and charges the truth to be, that said Samuel Hemphill, never did reside upon, cultivate or possess, any part of the said North-east quarter of section eighteen in Township sixteen, South of range twenty-five West, aforesaid, either in the year 1829 or 1830; For your orator has been informed and believes, and charges it to be true, that some time in 1830 or 1832, the said Samuel Hemphill, left the County of Lafayette and never returned to said County to reside there, and as your orator believes, never returned, even upon a temporary visit. And your orator is farther informed and believes it to be true, that when the said Samuel Hemphill left the County of La-

fayette, as aforesaid, neither he, nor the said Josiah Garland, had any idea, that the said Samuel Hemphill was entitled to a pre-emption under the act of 1830, to the said quarter section, for your orator avers that the said Samuel Hemphill, never did to the knowledge or information of your orator set up any claim or right of any description at any time to any part of said quarter section, until he was instigated to do so by the said Josiah Garland, some time in the year 1843, as will be hereinafter more fully stated, for your orator has been informed and charges it to be true that the said Samuel Hemphill not only removed from the County of Lafayette as above stated, but some time in the year 1838, actually abandoned his home in the United States, removen to the Republic of Texas, then a foreign State, took the oath of allegiance, as your orator has been informed and believes to that Government, and has ever since resided in Texas. Your orator further avers, that the improvement, cultivation, and residence of said Massach H. Jones upon said quarter section, was well known to said Samuel Hemphill, and that he did not then set up any claim thereto of any character whatever, and that the sale of said improvements, made by said Massach H. Jones to the said Joseph Jeans, about the year 1833, as aforesaid, and his possession and cultivation of said quarter section was a public and noturious fact, and your orator charges that the same was well known to the said Josiah Garland, and believes the same to have been known to the said Samuel Hemphill before his removal from the United States to the Republic of Texas. And your orator further states and charges that the purchase of said quarter section and improvements thereon by your orator from the said Joseph Jeans, and the cultivation, the enlarged improvement, and the actual residence of your orator for some years prior to the year 1843, was also a public and notorious fact, well known to the said Josiah Garland, and of which the said Samuel Hemphill, as your orator verily believes and charges, was also well informed, yet your orator avers it to be true, that neither the said Josiah Garland, or the said Samuel Hemphill, although informed of all these facts as your orator verily believes ever did give notice to the said Joseph Jones, of whom your orator purchased as aforesaid, as he verily believes, nor to your orator that he or either of them, had any right, title, or claim of any description whatever to said quarter section, but passively looked on and suffered the said Joseph Jones to purchase the said farm and improvements as above stated, and make valuable improvements, and expend large sums of money thereon, and also suffered your orator to purchase the same from the said Joseph Jones, as above stated, at a large price, and to make large improvements thereon, to wit: houses, mill, and cotton-gin, upon said quarter, of great value, to wit: of the value of at least four thousand dollars, and to expend and lay out in the purchase and improvement thereof, a very large sum of money, when equity and good conscience demand that if they or either of

them had any claim to said quarter section, they should have asserted the same, and not have permitted the said Joseph Jones, and particularly your orator to purchase said farm and improvements, and expend their money in the purchase thereof, and their time and money in making additional improvements without any notice of their adverse claim, and under the belief that the same was free from any convicting claim, other than that of the Government. And your orator would further show, that the conduct of the said Joseph Garland in this transaction is particularly marked with bad faith, and clearly evinces an unjust and fraudulent attempt on his part. knowingly and wilfully, to wrong and injure your orator, and this your orator avers, is made manifest from the deposition of the said Josiah Garland, sworn to in the year 1839, and taken in pursuance of a commission, from the Court of Chancery at Franklin, in the State of Tennessee, as a witness on behalf of Joseph Jones, in certain matters of controversy in said Court depending, wherein your orator and James H. Wilson, were complainants, and Joseph Jones was defendant, and wherein Joseph Jones, was complainant, and your orator defendant, in which deposition the said Josiah Garland, among other things deposed, as follows: to the following questions, to wit:

"Where did you live in the year 1835, and where do you now live?

Answer. Fisher's Prairie, Lafayette County, Arkansas.

What distance do you reside from the plantation sold by Joseph Jones to William Wynn, and on what side of Red River?

Answer. My plantation, *my plantation* joins the one sold by Jones to Wynn, on the south side of Red River.

Question. Did you purchase a farm in Fisher's Prairie? If so, state when you purchased.

Answer. I purchased a farm in Fisher's Prairie, in 1833, of Samuel and Andrew Hemphill. I purchased their improvements together with their right of preference or pre-emption, provided they were entitled to any, free and clear of all claims whatsoever, except that of the Government, to which the land belonged.

Question. How many acres do you claim in Fisher's Prairie?

Answer. Of Prairie land alone, I think I have four or five hundred acres."

Question. Did you or did you not examine the property sold by T. J. Mulholland, attorney in fact for Joseph Jones, to William Wynn, shortly before said trade took place, with the view of making a purchase for yourself and friend. If so, at what price did you value it?

Answer. I understood that Doctor Jones was very anxious to sell his proyerty on Red River, and in all probability $45,000, or probably $40.000 for it. I examined it, and was willing to give that amount for myself and partner. A copy of which deposition is herewith filed, and prayed to be made part of this bill, marked

"C. No. 3." And your orator avers that the said North-east quarter, of section No. 18, in Township sixteen, South of range twenty-five, was a part of the property sold by said Jones to your Orator, and which the said Garland swears he had examined, and the said Garland did not then, nor did he at any time, notify your Orator that he had any claim, right, title, or pretension to said quarter section, until some time in the year A. D. 1843, and then your Orator was for the first time informed, that he had proven up a pre-emption in the name of Samuel Hemphill, upon the said quarter section, and that information was communicated by a third person, after the pre-emption had been proven up by the said Josiah Garland, your Orator having no notice whatever, until that time, that there was any adverse claim of any nature or character whatever, and never suspected that the said Josiah Garland was secretly, and in violation of every principle of good faith and good neighborhood, endeavoring to prove up an old, stale, and abandoned pre-emption claim, which your Orator verily believes, and charges never did in reality, have any well founded existence; all this too, when the said Josiah Garland well knew that the said quarter section was a part of the property purchased by your Orator, from the said Joseph Jones, as aforesaid, for which your Orator has paid a high price, upon which your Orator, and those under whom he claimed, had long resided, and upon which your Orator had made many, and valuable improvements. And your Orator insists, that it is most inequitable and unjust in the said Josiah Garland, knowing the facts and circumstances above detailed, to induce and influence a man who had long abandoned the country, and who, for some years, had abandoned his residence in the United States, and was then a citizen of a Foreign Government, to prove up a pre-emption, under a prior Act of Congress, and that too, when, as your Orator has been informed and believes, the said Samuel Hemphill never did have any legal right of pre-emption to said quarter section. And your Orator has been further informed and believes, and charges it to be true, that the said Samuel Hemphill had no idea of proving up any pre-emption upon said quarter section, and would not have done so, but for the inducements offered to him by the said Josiah Garland, who, your Orator has been informed and believes, and charges it to be true, went to,the said Samuel Hemphill, some time in the latter part of the year 1842, or the early part of the year 1843, and offered the said Samuel Hemphill a certain sum of money, which your Orator has been informed and believes, was one hundred dollars to prove up said pre-emption for the benefit of said Josiah Garland, and that said Samuel Hemphill, was then living in the Republic of Texas, as aforesaid, and had long left the County of Lafayette, and abandoned his residence in the United States, and had no idea that he was entitled to a pre-emption upon said quarter section, and had no idea of making any attempt to prove up the same, until instigated by the said Josiah Garland, to do so

for his own benefit, and that he might thereby, by fraudulent management and unjust contrivance, make gain for himself, by depriving your Orator of property and improvements, for which your Orator had paid a high price, and which the said Josiah Garland, well knew, and property which your Orator had greatly improved, at a large cost, and which your Orator was possessing and cultivating without any notice or information of the existence of any adverse claim. And your Orator has been further informed, and aversl and believes it to be true, that the said Samuel Hemphill, never was in the County of Lafayette, or in Fisher's Prairie, after the survey of the public lands of the United States, were made, and that at the instance of said Josiah Garland, the said Samuel Hemphill left his residence in Texas, and came, as your Orator has been informed to Lames, in the State of Arkansas, and there before R. V. R. Green, a justice of the peace, in and for the County of Sevier, made affidavit, that in the year 1829, he cultivated about fifteen or twenty acres, which he believes, according to the marks hereunto annexed, to be on the North-east quarter of section eighteen, in Township sixteen, South of range twenty-five West, South of Red River, in the district of lands subject to sale at Washington, Arkansas, and that he had possession thereof on the 29th day of May, in the year 1830, and which said application for a pre-emption was attempted to be proven up by the affidavit of Morgan Cryer, and Jacob Waggoner, taken before Daniel T. Witter, Receiver of public moneys at Washington, Arkansas, in which they depose and say, that they know the within named Samuel Hemphill, and that they know the land he cultivated in the year 1829, and had in his possession on the 29th May, 1830, as herein stated, was on the North-east quarter of section eighteen, and that he did cultivate as therein stated, and that he had possession as therein set forth, and that all the material matters and things by him, therein set forth, are time in substance and in fact, a copy of which said affidavits from the General Land Office of the United States, is herewith filed, marked (A. No. 1,) and made a part of this bill. And your Orator has been informed and believes and avers it to be true, that the said Samuel Hemphill, never was in the County of Lafayette, where said land is situated, after the public surveys were made, that he never traced the lines of said surveys, or examined said lands after said surveys were made, but his affidavit, as appears from its face, was made merely from a map alone. And your Orator believes and charges it to be true, that said Samuel Hemphill, if he had examined the land itself by its lines and natural marks, would never have sworn that he believed he cultivated any part of said quarter, in the year 1829, or that he was possessed of any part thereof, in 1830. And your Orator further states that thirteen years or thereabouts had elapsed, from the time when it is alleged in the said affidavits, that the said Samuel cultivated and was possessed of a part *of a part* of said quarter section, in which

time changes had been made, in the fencings, in ditches, and in other respects, and it is not to be wondered at, that men of the most honest and upright character should be mistaken. And your Orator verily believes that the said Morgan Cryer and Jacob Waggoner, upon whose aforesaid affidavits the pre-emption of the said Samuel Hemphill was allowed, were mistaken, and your Orator believes that the said Cryer and Waggoner, did not make any accurate examination of the lines of said quarter section, and of the land said to have been cultivated by the said Samuel Hemphill, in 1829, and in his possession in the year 1830, and that they testified from their best recollection and belief, in which your Orator believes they were honest and sincere, but mistaken. And your Orator farther states, that he has been informed and believes that the said Samuel Hemphill, in the year 1829 and 1830, was a minor under age, and incapable as your Orator is advised of acquiring a pre-emption, by virtue of the Act of Congress, aforesaid. And your Orator further states, that the said Samuel Hemphill, as he is informed and believes, was not the head of a family, in the year 1829 and 1830, and that he was living with, working for, and under the control of his mother; that she was the head of the family, and whatever land was cultivated in the year 1829, was cultivated by him as a member of his mother's family, and that the possession of the land cultivated, was, as your Orator is advised, the possession of his mother, a widow lady, who was the head of the family, and not that of the said Samuel Hemphill. And your Orator further states, that the farm purchased in Fisher's Prairie, in 1833, of Samuel Hemphill and Andrew Hemphill, by the said Josiah Garland, which the said Josiah Garland, in his deposition aforesaid referred to, did not include any part of the said North-east quarter of section eighteen in Township sixteen, South of range twenty-five West, for your Orator avers, that the said Josiah Garland stated in his said deposition, hereinbefore referred to, that of Prairie land above, he thought he had four or five hundred acres, and that it adjoined the farm purchased, and your Orator verily believes and charges it to be true, that the said Josiah Garland, now has four or five hundred acres of Prairie land, inclusive of the said quarter section, which constitutes as your Orator has been informed and believes the Prairie land, and improvements purchased from the said Andrew and Samuel Hemphill, in the year 1833, in said deposition of the said Josiah Garland, referred to by your Oaator, from Jones, as aforesaid. And as further evidence that the said Josiah Garland, did not have any claim of any character or description to said quarter section, or to any improvements thereon, prior to the year 1839, being after your orator had purchased from said Jones, as aforesaid, and long after your Orator had possession of said quarter section, and after your Orator had expended his money and labor in improving the same, all of which the said Garland well knew, as he was at that time cultivating and living upon a planta-

tion adjoint to said quarter section, and had been upon terms of intercourse with your Orator. And your Orator states, that if the said Josiah Garland, had any claim to said quarter section, by virtue of his then purchase of the said Samuel Hemphill, he should have informed your Orator of the same, and not acted fraudulently and in bad faith, in permitting your Orator to expend his time, labor and money in improving land, which he the said Garland claimed, and would be entitled to without giving to your Orator any notice thereof, thereby fraudulently permitting your Orator to spend his time and money, in improving the property claimed by the said Garland, and for his use and benefit: all of which the said Garland well knew. And your Orator further states, that if the said Josiah Garland had not purchased said improvement and pre-emption right, until after 1839, when he, then well knew of your Orator's purchase of the same, from the said Jones, that thus he acted fraudulently and in bad faith, in instigating the said Samuel Hemphill, to prove up an old and stale pre-emption claim upon said quarter, which, if any such claim ever existed, which your Orator denies, and which had been long since abandoned, and in the proving up of which, the said Josiah Garland, was the active agent, for your Orator has been informed and believes that the said Josiah Garland, for a sum of money to be by him paid to the said Samuel Hemphill, as aforesaid, induced the said Samuel Hemphill to come into the State of Arkansas, at Logansport, as aforesaid, and to make the affidavit as aforesaid, and that he the said Hemphill, then returned to his residence, in the then Republic of Texas, and that the said Josiah Garland procured the attendance of the witnesses in proving up said pre-emption before the Register and Receiver of the Land Office at Washington, aforesaid, and paid to the said Receiver, the entrance money for the said quarter section, and through his agency and procurement, said pretended pre-emption was allowed at the Land Office at Washington, aforesaid, and a claim to which, your Orator verily believes and charges, never would have been set up, or attempted to be proven by the said Samuel Hemphill, but for the procurement and interference of the said Josiah Garland, as aforesaid. And your Orator further states, that he has been informed that the said Josiah Garland, two several times went from the State of Arkansas, to the then Foreign Republic of Texas, to induce the said Samuel Hemphill to prove up a right of pre-emption under the said Act of 1830, to the quarter section, and that the said Samuel Hemphill, at first refused so to do, but upon the second visit of the said Garland, and the said Garland then representing that the establishment of the said pre-emption, would not interfere with any one whatever, and upon his, the said Josiah Garland paying to the said Samuel Hemphill the sum of one hundred dollars, which was not to be returned even if said claim to said pre-emption should fail: he the said Samuel Hemphill, agreed, and did go to Jamesport, and make the affidavit aforesaid, and

above referred to. And your Orator is further informed and believes that the said Samuel Hemphill was deceived by the false and fraudulent representations of the said Josiah Garland in this behalf, and induced to believe that the cultivation and improvement made by the said Samuel Hemphill, was upon the said quarter section, when in truth and in fact the said Samuel Hemphill, did not know that the said pre-emption claim would interfere with the improvement made by said Mossach H. Jones, and owned by your Orator as aforesaid, but your Orator charges that if the said Samuel had known that the house and improvement made by Jones and owned by your Orator above described, were upon said quarter section, that the said Samuel never would have consented to apply for any pre-emption thereto, as by that fact he would have known that he was not entitled to any pre-emption to the said quarter section, and had no claim thereto either in law or equity. And your Orator further states, and shows to your honor, that by the decision of the General Land Office at Washington City, a patent was issued to the said Josiah Garland, as assignee of the said Samuel Hemphill, being under an act prior in date to the act under which your Orator proved up his pre-emption, was preferred as being the oldest title, which will more fully appear from an authenticated copy of a letter from "Theo. A. Blake Commr." to the Register and Receiver, Washington, Arkansas, and which is included in Exhibit (A. No. 1,) and is made a part of this bill. And your Orator is informed and believes, and charges it to be true, that the said Josiah Garland, to fully consummate the fraud herein described at or shortly after the entry of the said Samuel Hemphill to assign, transfer and set over to him the entry and pre-emption right aforesaid, and request in said transfer, that a patent might issue to the same in the name of the said Josiah Garland, as his assignee, and *and* send of said transfer to the Land Office Department, and that therefore a patent has been issued in accordance with said entry and transfer, and is now in the possession of, or under the control of the said Josiah Garland. And that the said Josiah Garland has commenced his action of ejectment against your Orator for the recovery of said quarter section, on the law side of this honorable Court, and will in by said suit, recover the same and oust and eject your Orator therefrom unless restrained, by the order and direction of this Court, all of which pretences, actions and doings, are contrary to equity and good conscience, and tend to the manifest injury and oppression of your Orator, and forasmuch as your Orator is remediless by the strict rules of the common law and relievable only in a court of equity, where cases of this and the like kind are properly relievable and cognizable, to the end therefore that the said Josiah Garland, may true and perfect answer make to all and singular, the statements and charges herein made in as full and complete a manner, as if the same were here again repeated, and be thereto particularly interrogated, not only as to his own knowledge but as to the best of

his information and belief. Your Orator prays that the said Josiah Garland, may be made a defendant to this bill, and that he be compelled to answer the same, and more particularly to answer and get forth whether or not he purchased the said supposed pre-emption right and improvements upon the said North-east quarter of section eighteen in Township sixteen, South of range twenty-five West, South of Red River aforesaid, in 1833, and whether the same was included in the farm which he then said defendant in his deposition aforesaid stated, he had purchased of Andrew and Samuel Hemphill. And if not he the said defendant, set forth and show when he did purchase the said supposed pre-emption right, and said supposed improvement of the said Samuel Hemphill, and the price paid therefor. And whether he the said defendant, did not own, cultivate and possess a tract of land adjacent to the said quarter section, and if he did not know of the purchase of said Jones from the said Mossach H. Jones, and the purchase of your Orator from the said Joseph Jones, and the possession, cultivation and occupancy of the said quarter section by the said Jones, the said Jones and your Orator, as is herein above stated. And whether the said defendant did not go to Texas, to induce the said Samuel Hemphill to prove up said pre-emption, and if the said defendant as herein charged was not the active agent in proving up said pre-emption, and if he did not pay the purchase money for said pre-emption to the said Receiver as Washington, as herein stated. And your Orator prays that an injunction may be granted to your Orator, against the said defendant to stay all proceedings at law in the said action of ejectment, and when the same shall be fully heard and understood by your honor, your Orator prays a decree perpetually enjoining the said Josiah Garland from any action under the patent aforesaid, and from asserting or getting up any claim to the said quarter under said patent, and that said patent may be declared null and void, and that the same be delivered up to be cancelled, and that your Orator be finally and perpetually quieted in his possession of said quarter section and all the improvements and betterments thereon situated, and your Orator prays for such other and further relief in the premises as the nature and circumstances of your Orator's case may require, and as to equity may seem just and proper.

May it please your honor to grant unto your Orator the States most gracious writ of subpœna to be directed to the said Josiah Garland, commanding him to be and appear before your honor in this honorable Court, and then and there full, true, and perfect answer make to all and singular, the premises and farther to stand to and abide such further order, direction and decree, as to your honor shall deem meet. And your Orator as in duty will ever pray, &c.

CONWAY SMITH,
HIGHTOWER & COCKE,
WILLIAM WYNN.

STATE OF ARKANSAS, } ss.
County of Lafayette. }

This day personally appeared in open Court, the said William Wynn, and being first duly sworn, made and subscribed the following affidavit, to wit:

That the matters and things set forth and stated in the above and foregoing Bill in Chancery, wherein this affiant is complainant, and Josiah Garland is defendant are true, so far as the same are stated from his own knowledge, and that so far as the same are stated from information, he verily believes them to be true.

WILLIAM WYNN.

Sworn to and subscribed before me, }
in open Court, this 6th day of July, }
1847.

JESSE DOUGLASS,
Clerk.

Filed July 6th, 1847.

J. DOUGLASS,
Clerk.
By J. THOMPSON,
Deputy.

Exhibit "A. No. 1," referred to in complainant's bill, appears in words and figures, following, to wit:

(*Testimony and affidavit of claimant on file with entry No.* 4607, *in the name of William Wynn.*)

STATE OF ARKANSAS, *County of Hempstead,*
UNITED STATES OF AMERICA.

Be it remembered, that on this the 29th day of November, eighteen hundred and forty-two, William Wynn, of the County of Lafayette, in the State aforesaid, personally appeared before me the undersigned, Receiver of public moneys, and on his oath, deposes and says, that he is the head of a family, and over the age of twenty-one years, that he settled on a portion of the public land of the United States, to wit: on the North-east quarter of section eighteen in Township sixteen, South of range twenty-five West, in the district of lands subject to sale at Washington, Arkansas, in the month of January 1830. That he erected thereon a dwelling house, and divers other out-houses and buildings that he had under fence and in cultivation on said quarter section, in the year 1836, some fifty acres or upwards, and that he has continued to cultivate said land up to the present time. That he was an actual settler and house-keeper on said quarter section, and in possession thereof by his personal residence thereon on the 22d of

June, 1838, and for the four months next preceding that date, and further says not.

WILLIAM WYNN.

Sworn to before me, the 29th November, 1842.

D. T. WETTER,
Receiver Pub. Moneys, Washington.

And at the same time and place, and before me, as aforesaid personally appeared, Jason C. Wilson and Jesse Tealock, and after being duly sworn, depose and say, that they are personally well acquainted with Col. William Wynn, who subscribed the foregoing deposition, that they know that he is the head of a family, as therein stated, and that all the material matters and things by him stated and set forth, are true in substance and in fact, and further they say not.

J. C. WILSON,
his
JESSE ⋈ TEALOCK.
mark.

Sworn to before me, the 29th November, 1842.

D. T. WITTER,
Receiver Pub. Mon. Washington, Arkansas.

LAND OFFICE, WASHINGTON, ARKANSAS, *29th November*, 1842.

We, the undersigned, Register and Receiver of the Land Office, aforesaid, certify that we are well acquainted with Jason C. Wilson and Jesse Tealock, who subscribed the within affidavit, and that they are worthy citizens, and their oath is entitled to full credit.

SAMUEL C. WHEAT,
Register.
D. T. WITTER,
Receiver.

The within and above, was endorsed as follows: Examined and allowed, this 29th November, 1842.

SAMUEL C. WHEAT,
Register.
D. T. WITTER,
Receiver.

This day personally appeared before me the undersigned, Receiver of the Land Office, at Washington, Arkansas, William Wynn, and on his oath, deposes and saith, that he entered on the Northeast quarter of section eighteen, in Township sixteen, South of range twenty-five West, South of Red River, in his own right and exclusively for his own use and benefit, and he has not directly or

indirectly, made any agreement or contract whatsoever, in any way or manner with any person or persons by which the title which he might acquire from the Government of the United States, should enure to the benefit or use of any person except himself, or to convey or to transfer the said land or the title which he may acquire to the same, to any person or persons whatever, at any subsequent time.

WILLIAM WYNN.

Sworn to before me, this 29th day of November, 1842.

D. T. WITTER.
Receiver.

("*Testimony on file with entry No.* 467, *in name of Samuel Hemphill.*")

STATE OF ARKANSAS, *County of Sevier,*
UNITED STATES OF AMERICA.

Be it remembered, that on this the sixteenth day of February, in the year of our Lord eighteen hundred and forty-three, Samuel Hemphill, late of the County of Lafayette, in the State aforesaid, personally appeared before the undersigned, an acting Justice of the Peace, within and for the said County of Sevier, and on his oath deposes and says, that in the year 1829, he cultivated about fifteen or twenty acres, which he believes, according to the map hereunto annexed, to be on the North-east quarter of section eighteen, in Township sixteen, South of range twenty-five West, South of Red River, in the District of lands subject to sale at Washington, Arkansas, and that he had possession thereof, on the 29th day of May, in the year 1830, and further he says not.

S. HEMPHILL.

Sworn to before me, the day and year first above written.

R. V. R. GREEN,
J. P.

STATE OF ARKANSAS, *County of Hempstead.*

This eighteenth day of February, in the year 1843, Morgan Cryer and Jacob Waggoner, personally appeared before me, Receiver of Public Moneys at Washington, Arkansas, and on their oath, depose and say, that they know the within named Samuel Hemphill, and that they know the land he cultivated in the year 1829, and had in his possession, on the 29th May, 1830, as herein stated, was on the North-east quarter of section eighteen, and that he did cultivate as therein stated, and that he had possession as

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n as

therein set forth, and that all the material matters and things, by him therein set forth, are true in substance and in fact, and further say not.

M. CRYER,
his
JACOB ⋊ WAGGONER.
mark.

Sworn to before me, the 18th February, 1843.

D. T. WITTER,
Receiver.

Morgan Cryer and Jacob Waggoner, are respectable citizens of Lafayette County, and entitled to credit.

D. T. WITTER,
Receiver.
SAMUEL C. WHEAT,
Register.

(The within and above, was endorsed as follows:)
"Examined and allowed this the 19th February, 1843."

SAMUEL C. WHEAT,
Register.
D. T. WITTER,
Receiver.

(*For Plot see Original, page* 25.)

GENERAL LAND OFFICE, *January 9th*, 1844.

GENTLEMEN:

The testimony filed with the conflicting claims of Wm. Wynn, per certif. 4607, and of Samuel Hemphill, per certificate 4671. Each for the N. E. ¼, 18 T. 16 S. R. 25 West, and that filed with the conflicting claims of Josiah Garland, per certif. 4631, and of Mossach H. Jones, per certif. 4673, the former for the E. ½ S. E. ¼ 18, and E. ½ N. E. ¼ 19 T. 16 S. R. 25, and the latter for the whole of the S. E. ¼ 18, T. 16, S. R. 25 W., has been examined.

Your allowance of the entries 4671, and 4673, has been approved and the certificates have been placed on file for patenting.

The claims upon which they are founded, are fully proven and being under the law of 29th May, 1830, must take precedence of entries 4607, and 4631, founded on the subsequent laws of 1838 and 1841. Certificates 4607 and 4631, have been cancelled, the latter embraces the E. ½ N. E. ¼ 19, not interfered with by entry 4673, but as the claimant, Josiah Garland, was at the time of the entry, the owner of 320 acres of land in Arkansas, he had no right of pre-emption, under the law of 1841, and therefore entry 4631

is void, irrespective of the interference therewith, in part by the prior claim of Mossach H. Jones.

Upon application under act of 12th January, 1825, the parties entitled to the purchase money on entries 4607 and 4631, can have the same refunded to them, by treasury warrant.

Respectfully your Obt. Servt.

THO. H. BLAKE,
Comm'r.

To Register and Receiver, Washington, Arkansas.

General Land Office, *February 26th*, 1846.

I, James Shields, Commissioner of the General Land Office, do hereby certify that the foregoing four pages, and part of this, the fifth page, together with the plot or diagram, attached to the third page, are truly copied from the files and records of this office.

[SEAL.] In testimony whereof, I have hereunto set my name, and caused the seal of said office to be here unto affixed, the day and date last above written.

JAMES SHIELDS,
Commissioner.

Filed 6th July, 1847.

JESSE DOUGLASS,
Clerk.

Exhibit (C. No. 3,) referred to in said complainants bill, appear in words and figures following, to wit:

William Wynn, et. al. Compts.,
vs.
Joseph Jones, Deft. } In Chancery.

At Franklin, Williamson County, Tennessee.

State of Arkansas, *County of Lafayette.*

In pursuance of the annexed commission, to me directed from the Honorable the Court of Chancery, at Franklin, in the State of Tennessee, I have caused to come before me at the Clerk's Office, of the County Court, for the County of Lafayette, in the State of Arkansas, on the 15th day of February, in the year 1839, Josiah Garland, aged about forty years, a witness on behalf of Joseph Jones, in certain matters of controversy in said Court depending, wherein William Wynn and James H. Wilson, are complainants, and Joseph Jones is defendant, and wherein Joseph Jones is complainant, and William Wynn is defendant, who being first duly

sworn upon the Holy Evangelists, to speak to the truth, the whole truth, and nothing but the truth, deposeth as follows:

(*The deposition of Josiah Garland.*)

Question by Jones' agent. Where did you live in the year 1835, and where do you now live?

Answer. Fisher's Prairie, Lafayette County, Arkansas.

Question by same. What distance do you reside from the plantation sold by Joseph Jones to William Wynn, and on what side of Red River?

Answer. My plantation joins the one sold by Jones to Wynn, on the South side of Red River.

Question by do. Did you see William Wynn before his purchase of Jones' farm—if so, state when, where, and how often?

Answer. I saw him frequently before he purchased the farm, and generally at his residence, at the cut-off, about two miles from Fisher's Prairie, and also at my house in the Prairie.

Question. How was Wynn's health at that time, and what did he say to you in relation to his intended purchase of Jones' property in Fisher's Prairie.

Answer. His health was so as to permit him to travel about the country on horseback, as to his purchase, he would occasionally chat about Jones' plantation, &c., but he never as I now recollect, named anything to me of his intended purchase, before he had done so.

Question. Did Wynn, before he purchased from Jones, ask your opinion of the lands in Fisher's Prairie, and did you or he speak upon the subject of the claims to lands on the South side of Red River, and particularly in Fisher's Prairie, if so, state what he said upon the subjects, and what you said to him as near as you can recollect?

Answer. Col. Wynn and myself would occasionally chat when together, about the country and lands generally, we have also spoken of the claims of the lands in the country. I generally said to Wynn, I believed Fisher's Prairie was in the United States. As to his sentiments, I don't know that he ever decided in his own mind, whether it was in the United States or Texas.

Question. What was the general opinion of the better informed citizens, as to whether Fisher's Prairie was in Texas or the United States of America, and what Government exercised jurisdiction there?

Answer. Public sentiment was so much divided on that subject, that it is impossible for me to decide that point. We are under the Government of the United States.

Question. Did Wynn and yourself ever speak of what rights the settlers on the South side of Red River would have under the pre-emption laws of the United States, and what rights they would

have under the Mexican laws, in the event it should fall in either Government?

Answer. As well as I recollect, we sometimes chatted respecting the right of pre-emption, if we fell into the United States, and the rights to which we would be entitled if in Texas.

Question. Did you purchase a farm in Fisher's Prairie; if so, state when you purchased it, of whom, and what kind of property you purchased?

Answer. I purchased a farm in Fisher's Prairie, in 1833, of Andrew and Samuel Hemphill. I purchased their improvements, together with their right of preference or pre-emption, provided they were entitled to any, free and clear of all claims whatever, except that of the Government, to which the land belonged.

Question. Do you know at what time, men representing that they had Mexican land claims, and that the same were liable to location, about Fisher's Prairie, as the country would certainly fall to the Mexican Government, first offered those claims for sale, in the neighborhood of Fisher's Prairie?

Answer. As well as I recollect, about 1834, a company from Texas, came in and located eleven league claims in the neighborhood of Fisher's Prairie, and offered some of them for sale to those residing on the lands, and to others as I understood.

Question. Was it believed by any one about Fisher's Prairie, before the Texas land speculators came about that Fisher's Prairie was in Texas?

Answer. Some expressed themselves to believe it, before the land speculators came to the country.

Question. Is there any pretended Mexican claims located on Fisher's Prairie, and if so, on what part thereon, and when located?

Answer. I have understood that there was several, or at least two claims located on Fisher's Prairie. I have seen myself, some surveyors' chops or marks, but never traecd them so as to ascertain whether it was entirely covered by the claim or not.

Question. Is not the good land on the South side of Red River, generally pretended to be located with Mexican claims, as you are informed and believe?

Answer. I am so informed, that they are generally covered by Mexican or Texas claims.

Question. Who claimed those Mexican claims?

Answer. A man by the name of Allen, and others, land speculators, also Guletah Dunn, &c., &c.

Question. Did those Mexican land speculators put the settlers off their improvements, by virtue of their locations, or what did they do after location?

Answer. They never attempted to put any person off, so far as I know, after locating, they quit the country.

Question. Did the Mexican land speculators not offer to sell

their locations to the settlers at much less than the real value of the lands?

Answer. They did, so far as my knowledge extends.

Question. Did not the settlers hold their claims and improvements, by virtue of their improvements, at a much higher rate than the Mexican land speculators, did their pretended locations?

Answer. They did, so far as I know.

Question. What did the Mexican land speculators ask per acre, for their pretended locations, on the South side of Red River?

Answer. So far as my own knowledge extends, they offered to sell to the settlers, their lands, but I don't recollect at what per acre; they proposed to sell to me, my plantation, for two thousand dollars, five hundred dollars in hand, the balance in one and two years. I felt insulted at their proposals, considering my own claim as preferable to theirs, gave them a cool answer and reception, and they shortly left.

Question. What was good Prairie farms in Fisher's Prairie, rated at per acre, in the year 1835, such as Jones' and yours?

Answer. I never put any particular valuation on my own at that time, not having a fee simple title to the same. As to the improvements of Jones and others, there was so many different conversations and opinions that I never paid much attention to them.

Question. What would you be willing to sell your claim to your farm in Fisher's Prairie, for per acre. Would you be willing to take thirty dollars per acre?

Answer. I have not put any valuation on my claim lately, my land I have in cultivation I would not take thirty dollars per acre for.

Question. Is your land and the land sold by Jones to Wynn, similar in quality?

Answer. It is generally of a similar quality.

Question. What amount of cotton will good land in Fisher's Prairie, well cultivated, in a favorable year produce per acre?

Answer. From fifteen hundred to eighteen hundred pounds.

Question. How was the farm purchased by Wynn of Jones, managed in the year 1836, 1837 and 1838; was it well stocked with teams, hands, &c., and was it managed in a planter-like manner?

Answer. In 1836 it was badly managed, in 1837, I thought it well managed, as far as my knowledge extends, in 1838, it was badly managed, as far as I saw.

Question. In what year did the overflow happen in Red River, since you resided in Fisher's Prairie?

Answer. In the year 1835, there was an overflow, higher, than I have ever seen since or before.

Question first by complainant. What amount of land does a settler in Texas receive from the Government of Texas?

Answer. A married man is entitled to a league and labor, and a single man, to one-third that amount, a league and labor, in 4621.

By same. How many acres do you claim in Fisher's Prairie?

Answer. Of Prairie land alone, I think I have four or five hundred acres.

By same. What price did you pay for your land?

Answer. I paid sixteen hundred dollars, in 1834, and purchased in 1833, in October, about the twenty-first.

By same. How does your land compare in quality, with the land purchased by Wynn from Jones?

Answer. The lands are similar, as near as I can tell.

By same. Was it not understood, and is it not the law of Texas, that a location or land claim, cannot be located on land over the head of a settler—was not a settler's right considered the best?

Answer. It has always been considered the best right, and I think also the laws of Texas, that claims cannot be legally located upon the lands of any actual settler.

Question. Did improvements similar to yours, rise or fall in value, from the year 1833, the time of your purchase to the first of January, 1836?

Answer. Improvements rose considerably in value during that time.

J. GARLAND.

After the foregoing deposition had been duly sworn to, and signed by Col. Garland, by the mutual consent of the parties to the suit, Col. Garland was again called, and examined as follows: On the sixteenth day of February, 1839, at the place in the caption, mentioned, to wit:

LEWIS B. FORT,
J. P.

Question by complainant, Wilson. What do you think would be the average crop of cotton on Fisher's Prairie, taking into consideration, wet seasons and early frosts and spring frosts with first rate planters, since you settled in the Prairie?

Answer. I have made five crops on Red River, the first with the number of difficulties I had to encounter, I made seven bales to the hand, the second, I made about six bales to the hand, and the year of the overflow, in 1835, the third, I had a trifling overseer that neglected his business, it was also a wet season, and we made about one bale to the hand, in 1836, the fourth year, I made and saved about eight bales to the hand, and could not save all my crop,

in 1837 and in 1838, I have made a sorry crop, it being a bad crop year, and not very well managed, say not more than 3½ or 4 bales to the hand, it is not yet baled, therefore I cannot correctly tell the amount. I think a good planter with strict attention for the last five years, would have averaged 7 or 8 bales to the hand, weighing 450 lbs.

By same. How many acres of Prairie land can be cultivated in cotton with corn to support, with one hand with good management?

Answer. About 8 acres in cotton, with 3 or 4 in corn is a plenty. I have myself, cultivated more, but it was not well done.

By same. Is not getting a good stand of cotton in the spring, the principal object in growing cotton?

Answer. It is a great object in getting a good stand as early as possible, in raising cotton crops.

By same. In the years 1835 and 1836, was not nearly all the timbered land on the South side of the Red River, unoccupied or not settled by ony person.

Answer. The greater part was unoccupied, except occasionally a small improvemcnt made on good lands.

By same. Was it not understood, that all the good lands on the South side of the River, was covered with Texas claims, thereby preventing a settler at that time from acquiring a right to the land from the Government of Texas, by settling on the same?

Answer. In my neihhborhood, the good lands were covered by Texas claims, but these claims prevented no person from settling. The Texas laws prevent all claims whatever from being located upon an actual settler, and persons settling upon Texas lands, could not settle upon lands previously located by good claims.

By same. Did you or did you not examine the property sold by T. J. Mulholland, attorney in fact for Joseph Jones to William Wynn, shortly before said trade took place, with a view of making a purchase for yourself and friend, if so, at what price did you value it?

Answer. I understood that Doctor Jones was very anxious to sell his property on Red River, and in all probability, would take $45,000 or probably $40,000 for it. I examined it, and was willing to give that amount for myself and partner.

By same. What was the average weight of the bales of cotton raised by you, in 1837?

Answer. A part of my first cotton sent down, was injured in a Keel boat, detained in the raft. It was picked off and repacked or baled, and only weighed about 350 pounds. What they weighed at home I know not. I was absent, the balance of my crop as near as I now recollect, was about 435 pounds.

Question by the agent of Jones. When was the independence of Texas declared. What kind of claims were pretended to be

located on the lands near Fisher's Prairie and on the Prairie; were they supposed to be good claims, and where were they located. And do those wishing to settle, regard their pretended locations?

Answer. The independence of Texas was declared I think in the spring of 1836. The claims located on and about Fisher's Prairie, were eleven league claims so called, and generally thought fraudulent, and as far as I know, no person regarded their claims, they were generally located in the year 1834.

Question. Can good stands of cotton be usually obtained by prudent management on the cotton farms in Fisher's Prairie?

Answer. An experienced planter with good seed nicely planted, generally get good stands I think in Fisher's Prairie.

Question. Were you acquainted with the property sold by Jones to Wynn, and with the terms of the sale; if so, state your opinion of the same at the time the sale was made?

Answer. I was acquainted with the property and understood the terms of sale, was about this: Col. Wynn had to pay a certain amount down, about $15,000, and the balance in one, two, and three years, and the total amount was about sixty thousand dollars. My opinion was he gave too much for the property.

Question. What did you think the property was worth upon those credits, and don't you think it could have been sold to others for as much as $60,000 since the trade, if the sale had not been made to Wynn?

Answer. I thought all the property sold at the time, worth about $40,000, I cannot say whether any other person would or not. I believe it was generally thought by the neighbors, that Jones sold his property very well.

Question. What right did you expect to get from Jones, had you and your partner have purchased Jones' property?

Answer. The same right only that I purchased of the Hemphills, viz: their right to preference or pre-emption, what they were entitled to.

Question. By Wilson. Have you seen the list of the negroes and stock of the property, sold by Jones to Wynn, made out and embodied in the deposition of John A. Bryant, to be read as evidence in this cause; if so, state whether or not the property is fairly described and valued in said list?

Answer. I have not seen the list embodied in the deposition, but a copy acknowledged by both parties to be true, I have seen. It is fairly described and valued, except some old negroes valued at nothing. I think $1000 more might be added for their valuation, the balance are valued at the common price negroes sold at at that time.

By same. In said list, George with one bad eye, and fifty years old, described as having been afflicted with the gravel; please state what he would have been worth, if sound, as you believed he was, and state whether or not $150 was not enough for him if he had

the gravel, as described in the list; state if he is not now dead, and when he died. State when Harry Hobson died?

Answer. I know nothing of his having the gravel, and thought him worth $350, and as he had the gravel, I cannot say what he was worth. Harry, as well as I can recollect, died in 1837, and George, in 1837 or 1838.

J. GARLAND.

The notices of the time and place of taking this deposition, and all others taken at this place, and in the presence of us, are hereby waived this 16th of February, 1839.

THOS. J. MULHOLLAND,
JAMES H. WILSON.

The foregoing deposition of Josiah Garland, was taken before me, Lewis B. Fort, an acting Justice of the Peace for Lafayette County, in the State of Arkansas, at the place and on the day in the caption mentioned, and was written by the said defendant in my presence, the complainants and defendants being present at the taking of the same. I do certify that I am not agent, attorney, or solicitor for either party, and that I am in no way interested in the event of said suit.

Given under my hand and seal, this 16th day of February, 1839.

LEWIS B. FORT,
J. P. [SEAL.]

A true copy, Attest

BERRY LETTON,
Am.
per WILL. S. CAMPBELL,
D. C. & M.

Filed July 6th, 1847.

J. DOUGLASS,
Clerk.
By J. THOMPSON,
D. C.

Said Exhibit "B. No. 2," referred to in the foregoing bill of said complainant, appears in words and figures, following, to wit:

No. 4607.

RECEIVERS OFFICE, WASHINGTON, ARKANSAS, *November 30th*, 1842.

Received from William Wynn, of Lafayette County, Arkansas, the sum of two hundred dollars and cents, being in full for the North-east quarter of section number eighteen, in Township

No. sixteen, South of range No. twenty-five, containing one hundred and sixty acres and ——— hundredths, at $1 25 cents per acre.

$200 00. D. P. WITTER.
Receiver.

Pre-emp. Act, 1838.

Filed July 9th, 1847.

J. DOUGLASS,
Clerk.
By J. THOMPSON,
D. C.

Afterwards, to wit: on the 9th of July, 1847, proceedings were had herein, which appear of record in words and figures following, to wit:

WILLIAM WYNN, *vs.* JOSIAH GARLAND. } Bill for Injunction.

Came the complainant by his solicitor, and came also the defendant by his solicitor, and presents and offers to file his answer, which is resisted, and being submitted, the Court decides the answer cannot now be filed, the defendant excepts to the decision of the Court, and on his motion it is ordered that he have leave to tender his bill of exceptions at a future day of the term.

Said bill being submitted on argument of counsel, it is ordered that the injunction be granted, when bond shall have been approved by the Court.

Said injunction bond appears in words and figures following, to wit:

Know all men by these presents, that we, William Wynn as principal, and Flutewood Herndon, S. L. Higgs, William W. Wynn and Chas. C. Allen, as his securities, are held and firmly bound unto Josiah Garland, in the sum of seven thousand dollars, for the payment whereof well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this tenth day of July, A. D. 1847.

The condition of the above obligations is such, that whereas the above bounden William Wynn, has filed in the Circuit Court of Lafayette County, in the State of Arkansas, his bill praying among other things, that the said Josiah Garland may be stayed, and enjoined from proceeding further in an action of ejectment now pending in said Court, for the North-east quarter of section eighteen, in Township sixteen, South of range twenty-five West, wherein the said Garland is plaintiff, and the said Wynn is defendant, now in the above bounden William Wynn, shall abide the decision which may be made in the trial of said bill of complaint for an injunction and shall pay all sums of money and costs that may be adjudged

against him, in case the said injunction shall be dissolved, in whole or in part, then this obligation to be void, otherwise to be in full force and effect.

WILLIAM WYNN, [SEAL.]
W. F. MORRIS, [SEAL.]
F. HERNDON, [SEAL.]
JOHN O. HIGHTOWER, [SEAL.]
S. L. HIGGS, [SEAL.]
WILLIAM W. WYNN, [SEAL.]
C. C. ALLEN, [SEAL.]

I approve the above bond as sufficient.

CHRIST. C. SCOTT,
Judge.

Filed July 10th, 1847.

J. DOUGLASS,
Clerk.
By J. THOMPSON,
D. C.

An entry appears of record of July 10th, 1847, in words and figures following, to wit:

WILLIAM WYNN,
vs.
JOSIAH GARLAND, } Injunction.

Came the parties by their respective solicitors, and on leave asked and obtained, the defendant files his answer herein: the injunction bond being approved by the Court, is filed.

On the same day, to wit, on the 10th of July, 1847, appears an entry in words and figures following, to wit:

WILLIAM WYNN,
vs.
JOSIAH GARLAND, } Injunction.

Came the parties by their solicitors, and the defendant tenders his bill of exceptions, which is signed, sealed, and ordered of record herein, on leave asked and obtained, the defendant filed his motion for rule upon the complaint to except or reply to the answer herein, at this term.

Said exceptions appear in words and figures following, to wit:

WILLIAM WYNN,
vs.
JOSIAH GARLAND. } Bill in Chancery for injunction.

Be it remembered that on the application of the said William Wynn, the complainant in this cause to the Honorable C. C. Scott, Judge of the Lafayette Circuit Court, in open Court in term, on

the 9th day of July, A. D. 1847, for an injunction in this cause against the said defendant, that when said application for said injunction came up for argument the defendant offered to file his answer to said bill of said complainant, and which said answer is paper marked "A. No. 1," and is in the words and figures following, to wit:

IN LAFAYETTE CIRCUIT COURT,
To July term thereof A. D. 1847.

The answer of Josiah Garland to the bill of complaint exhibited against him in this Court by William Wynn, complainant.

This defendant now and at all times hereafter, saving and reserving to himself all and all manner of benefit and exceptions to the many errors and imperfections in said bill of complaint contained and set forth for answer thereto, or to so much thereof as he is advised is material for him to make answer unto, answering says, that he cannot state from his own knowledge but he has been informed and admits it to be true, that said Jones, on or about the time mentioned in said bill, moved to and settled upon as a portion of the public lands of the Unit d States, then unsurveyed, lying and being in the County of Lafayette, and State of Arkansas, on the South side of Red River, on what was then and still is known as Fisher's Prairie, and immediately commenced opening land and making an improvement on said land and continued to reside upon and cultivate said land until on or about the year, A. D. 1832, or thereabout as this respondent is informed, as he did not come to the State of Arkansas until on or about the year A. D. 1833, and consequently from his own knowledge he knows nothing in regard to the facts aforesaid, that at the time this respondent came to the State of Arkansas, as aforesaid, the slaves and overseer of said Jones were upon and cultivating a portion of the quarter section of land hereinafter named and described, and which land said respondent has been informed and admits it to be true, was a part of the same quarter section settled by Jones as aforesaid. Respondent has likewise been informed that Jones purchased said improvement from said Jones, but respondent does not know and cannot state from information or otherwise for what consideration. Respondent has been informed and he believes it to be true, that said Jones, shortly after the said purchase as aforesaid, placed his slaves upon and cultivated said land. Respondent does not know neither from information or otherwise, whether or not said Jones, at the time he purchased said improvement, had notice of any adverse claim or right of pre-emption on the same tract of land, which was at that time unsurveyed public lands, but respondent avers the fact to be, that since said land has been surveyed it appears that one Samuel Hemphill, several years before that time had settled upon, and was entitled to a right of pre-emption to said tract of land, under and by virtue of an Act of Congress, passed on the 29th day of May,

A. D. 1830, as will be hereinafter more particularly stated and set forth. Respondent admits it to be true that said Jones continued to cultivate a portion of said tract of land until some time in the year A. D. 1835, but he did not know and cannot state from information and belief or otherwise, whether he made any further or other improvement on said land, other than such as had been made by said Jones. Respondent states that he believes it to be true, that said Jones some time in the year A. D. 1835, sold his improvement in Fisher's Prairie, including a portion of the quarter section of land mentioned in said bill to said complainant likewise including slaves, stock and farming utensils, for which, this respondent was informed he was to pay the price of sixty thousand dollars; but respondent has been informed that there was some difficulty which grew out of said sale, and owing to that difficulty there was finally a compromise made by which complainant was to pay the sum of forty thousand dollars or thereabouts for said improvements, slaves, &c., being about twenty thousand dollars less than his original contract, said respondent says that about the time said sale was made to said complainant by said Jones, said complainant took possession of said improvement, and kept his slaves thereon and has continued so to do, up to this time, but respondent positively denies that said complainant actually became a resident of the State of Arkansas until on or about the year A. D. 1841, and from which time respondent admits he has resided on said land, and that from the time of said purchase up to the time when he permanently settled upon said land that he made occasional visits in the State of Arkansas, that respondent did not consider him a citizen of the State of Arkansas, until on or about the last mentioned year 1841. Respondent admits to be true that sometime in the year 1840, the United States caused the said Township to be surveyed, in which said farm and improvement were situated preparatory for sale, and that by said survey the numbers and description of the land upon which said farm and improvements were situated, now ascertained. Respondent admits it to be true that a part of said farm, improvement, and betterment, were and are upon the North-east quarter of section eighteen in Township sixteen, South of range 25 West, in the district of land subject to sale at Washington, Arkansas, and at the time said survey was made, the dwelling house, some negro cabins, and other out buildings were situated upon said quarter section, and about twenty-five or thirty acres of said land was cleared and in cultivation by said complainant at that time, but he has since that period, extended his improvement on said land, and now has in cultivation some fifty or more acres of the same. Respondent from information derived from the papers on file in the Land Office admits it to be true, that on the 29th day of November, A. D. 1842, the complainant with his witnesses appeared at the Land Office, in Washington, Arkansas, and made the affidavits set forth in the exhibit marked "A. No. 1," referred to and made a part of said bill

of complaint, and respondent admits it to be true, that the Register and Receiver of the said Land Office, did on the day and year aforesaid, by mistake and ignorance of the fact that any other person was entitled to a pre-emption thereon, under and by virtue of any prior Act of Congress, granted and allowed a pre-emption to said complainant in his own right under and by virtue of the pre-emption act of 1838, respondent believes and admits it to be true, that the exhibit "A. No. 1," referred to and made a part of said bill, is correctly copied from the original on file in the said office at Washington, Arkansas. Respondent denies that said affidavits and proof in relation to said pre-emption were taken before both the Register and the Register of the Land Office, at Washington. Respondent has been informed and believes it to be true, that at the time said pre-emption was so illegally granted, as before stated, said complainant paid to the Receiver of Public Moneys at Washington, the government price for said land and received a certificate a true copy of which is referred to in said bill, as exhibit B. No. 2. Respondent admits that said complainant by virtue of his proofs of said pretended right of pre-emption to said quarter section on the payment of the purchase money aforesaid or the Receiver's receipt aforesaid or by virtue of any state of facts ever was or is entitled to a patent from the United States to said land or that said complainant was prevented from obtaining the same by the fraudulent act or acts, or the dishonest contrivance of this respondent as charged in said bill.

Respondent admits to be true, that a pre-emption was proved up upon said quarter section of land, in the name of said Samuel Hemphill, by the procurement of this respondent under the prior pre-emption law of 29th May, A. D. 1830, in the name and under the circumstances hereinafter set forth and not otherwise or differently. Respondent further avers that said Samuel Hemphill, was justly and honestly entitled to a right of pre-emption to said quarter section of land under and by virtue of a pre-emption law passed in the year 1830, as herein before stated. Respondent further answering, says that said Hemphill resided on an adjoining quarter section and actually cultivated and possessed a portion of the aforesaid quarter section of land for many years prior to and during the whole time and term of the years A. D. 1829 and 1830 and for several years thereafter, and that his right of pre-emption thereto was paramount to that of complainant, or any person under whom he claimed.

Respondent denies that said Samuel Hemphill left the County of Lafayette, in the years 1831 or 1832, as charged in said bill. But respondent admits that he purchased his right of pre-emption and improvement in the year 1833, and that said Hemphill left and permanently removed from said County, in the year 1834, and not before, and respondent further says that often thereafter he returned to and visited said County. Respondent further answering, says,

that it is not true as charged in said bill that either said Hemphill or himself had any idea that said Hemphill had no right of pre-emption to said land which he cultivated as aforesaid, or that said Hemphill did not claim any right of pre-emption thereto but on the contrary thereof, this respondent avers that at the time he purchased said improvement of said Hemphill, he also purchased any right of pre-emption which he then had to public lands in Fisher's Prairie, and it was then expressly agreed that said Samuel Hemphill should prove up and establish any such rights of pre-emption at the proper time for the benefit of this respondent.

Respondent further states, that sometime in the year A. D. 1834, said Samuel Hemphill moved to the County of Clark, in the State of Arkansas, and resided there for a number of years, but afterwards abandoned the United States, and removed to the Republic, now State of Texas, and has ever since resided there, but at what time said Hemphill removed to said Republic of Texas, this respondent is unable to state from information or otherwise. Respondent does not know and cannot state from information or otherwise, whether or not said Samuel Hemphill took the oath of allegiance to said Republic of Texas.

Respondent further answering, says, said land was not surveyed until on or about the year A. D. 1840, and until that time it was not known or ascertained that the improvement of the said Samuel Hemphill and Jones respectively, would, as they did, fall upon the same quarter section of land, but it is not true that the said Hemphill did not claim a right of pre-emption to the quarter section upon which by the public surveys, his said improvements should be situated.

Respondent believes it to be true, that the sale of said improvement made by Jones to said Jones, and his possession and cultivation thereof, was a notorious and public fact and was known to respondent and said Hemphill prior to the removal of said Hemphill to the said Republic of Texas, but it was not known that the improvement of the said Jones and Hemphill would both fall upon the same quarter section of land, until the making of such survey as before stated.

Respondent admits that the produce of said improvement by said complainant from said Jones, and the occupation and cultivation of the same, and the improvement and the residence of the said complainant and his overseer, as hereinbefore stated, was, for some years prior to 1843, a public and notorious fact well known to respondent, and he believes it probable, was also well known to said Hemphill, but neither respondent nor said Hemphill knows that any part of the improvement so made by said Hemphill and sold to this respondent as aforesaid would fall upon said quarter section, until the survey was made as hereinbefore stated, and for these reasons, true it is, that respondent did not give notice either to said Jones or to said complainant, that he or said Hemphill claimed a pre-emption

on said quarter section of land, and that all the improvements made on said land were made prior to the survey as aforesaid, and subsequent to the grant of said pre-emption of said Hemphill as hereinbefore stated. Respondent denies that he acted in bad faith with complainant or any one else in acquiring his title to said quarter section of land, or that he fraudulently attempted to wrong or injure said complainant or any other person, but that he acted throughout for the purpose of securing his own improvement upon said quarter section, as he lawfully and justly might do, and wholly denies that any such fraud was intended, or is evinced or made manifest by his said deposition for respondent, further answering, by way of explanation of said deposition as mentioned in said bill, says, that at the time the same was taken, the said land had not been surveyed, and consequently did not know that any part of said improvement sold by Jones to said complainant would fall upon this quarter section of land as it afterwards did, and for the same reason could not tell with any certainty at the time said depositions were taken, what quantity of prairie lands he was entitled to beyond a vague and indefinite calculation.

Respondent admits that the extract contained in said bill, purporting to be an extract from a deposition given by him, he believes to be truly copied and a correct extract from said deposition, and respondent further admits, that a portion of the improvement sold by Jones to said complainant, was situated upon said quarter section, but it was not known to be so situated until said lands were surveyed as aforesaid, and said respondent denies that said quarter section was sold by said Jones to said complainant, but avers that said Jones sold to said complainant simply his improvement, and probably his right of preference to that and several adjoining quarter sections.

Respondent says, that when he first went to Washington to prove said pre-emption, that he was advised, that the proper course to avoid all difficulty in relation to the matter, would be to notify said complainant of his intention so to do, and acting upon that advice he returned to Lafayette county, and where this respondent and said complainant both resided, but on inquiry found that said complainant had gone to Washington, and when respondent returned to Washington, said Wynn was present and engaged in proving up pre-emptions on lands in the same section of country when the said quarter section mentioned in said bill is situated, and respondent believes said Wynn was present in the land office, either personally or by attorney specially employed or retained by him to attend to the proving up of such claims as he desired to have confirmed and passed, and also to defeat if possible, any other claims which might be presented and would conflict with his interest, but whether present at the time said respondent proved up his pre-emption or not, respondent avers that said complainant had notice that said pre-emption had been proved up on the next morning thereafter. Re-

pondent positively denies that he practised any fraud, secrecy or deception, in relation to said pre-emption, but it was all done fairly and openly, in the same manner that complainant and others transacted their business in regard to pre-emption claims. Respondent avers that the said pre-emption of the said Samuel Hemphill so proved up and established as aforesaid, was a just and valid one.

Respondent further answering says, that at the time he purchased the improvement of said Samuel Hemphill, a portion of which, after the survey aforesaid, proved to be situated upon said quarter section as aforesaid, he took a bond or obligation from said Hemphill, who bound himself to prove up and give respondent the benefit of any pre-emption he might be entitled to under and by virtue of any settlement or improvement.

That after said land was surveyed, and the proper time had arrived to prove up said pre-emption, he applied to said Hemphill, who then lived in Texas, and required him to comply with the conditions of his said bond, and said Hemphill being at that time disabled and in bad health, although he expressed a desire and willingness, said he was in such a situation, that he would run a great risk of losing his life in making his journey to the Land Office in Arkanaas, as he was not in a situation to undergo the least exposure, and so respondent was fearful that the time allowed by law for proving up said pre-emption might expire: as an inducement to said Hemphill to undergo the fatigues of the journey, and as the respondent considered the land of much greater value than any right of action he might have against said Hemphill, in the event of his failure to comply with the conditions of said bond, he agreed to pay him the sum of two hundred dollars, when he, respondent should acquire a title and obtain peaceable possession of said land, if he, the said Hemphill could come to the State of Arkansas and make the necessary affidavit for obtaining the pre-emption.

Respondent does not know and cannot state from information, belief or otherwise, whether said Hemphill ever was in Lafayette County since the survey was made of the said land as aforesaid, and respondent admits that the affidavit of said Hemphill, Cryer, and Waggoner, in support of and upon which said pre-emption was granted, are correctly set forth and copied in exhibit A, No. 1, and referred to in said bill, and that said affidavits were respectively made at the time, and before the officers shown in and by said exhibit. And respondent further admits that the said affidavit of the said Hemphill was made at the request and by the procurement and under the circumstances hereinbefore stated, and not otherwise.

Respondent does not know from his own knowledge, that said Hemphill ever traced the lines of said quarter section, after the same was surveyed. but respondent expressly and positively avers, that a part of said improvement so made by said Hemphill and conveyed and sold to respondent, was and is situated upon said quarter section, and respondent further avers, that the face of the country

was not so changed as to render it difficult for a person acquainted with the improvement at the time said Hemphill cultivated the same, to recognise, distinguish and identify the same. Respondent says, that said Cryer and Waggoner are both old residents of this country, and have and do still reside in the neighborhood of, and have been acquainted with Hemphill's improvement from the time it was first settled up to this time, and that a few days before they made such affidavit they examined and traced the lines of said land, and satisfied themselves that the improvement so made by the said Samuel Hemphill, and sold to the Respondent, was situated upon the said quarter section of land, and respondent further says, that said Cryer and Waggoner are two of the most respectable and creditable citizens of Lafayette County, and have a sufficient knowledge of the survey of lands to trace lines with accuracy, and respondent according to his information and belief denies that they were mistaken, and avers that the said affidavit was correct in every particular. Respondent says, that said Samuel Hemphill had more than obtained the age of twenty-one years prior to the year A. D. 1829, as he is informed and believes, and respondent is advised and insists, that even if said Hemphill had not obtained the age of twenty-one years, yet it would make no difference in regard to his pre-emption rights to said land.

Respondent further states, that the said Samuel Hemphill, as he is informed and believes truly, was the head of a family during the years 1829 and '30, and denies that the land cultivated by him in the year 1829 as aforesaid, was cultivated by him as a member of his mother's family under her direction or for her use and benefit, or that the possession of the land so cultivated was the possession of his mother. Respondent says, that at the time he purchased said improvement in Fisher's prairie, and from thence until the survey was made as aforesaid, he did not know what particular land was covered thereby, but avers that a portion of the improvement so purchased by him from said Samuel Hemphill was and is situated upon said quarter section, that as the land had not been surveyed at the time said depositions had been taken, he could not state with any degree of certainty what quantity of land he would be entitled to, under and by virtue of said improvement. Respondent denies, that he now or ever has had exceeding four hundred acres of prairie land in said prairie, excluding said quarter section, as in said bill specified and set forth. Respondent further avers, that the improvement purchased from said Hemphill, and which has been in the continual possession of said respondent from the time of said purchase, extended on a portion of the North-east quarter and South-east quarter of section eighteen, all of which facts were well known by said complainant from the time of said survey, and were not known to respondent until that time, and complainant must have known and had every reason that respondent would attempt to hold his improvement by virtue of his pre-emption right.

Respondent further says, that if said complainant did as he has so often alleged in his said bill, expend his time, labor and money in making improvements on said quarter section, he did so after said survey in his own wrong, as he had every reason to believe that respondent would assert his claim to said land.

Respondent avers, that he purchased said improvement and right of pre-emption long prior to the year 1839, as hereinbefore stated, and respondent denies that said right of pre-emption had been abandoned. Respondent admits, that inasmuch as he had purchased said improvement and pre-emption and had extended said improvement since his said purchase, and esteemed the land of great value, he, this respondent was, as he lawfully might be, the active agent in having said pre-emption proved up and established. Respondent believes it to be true, that after said Hemphill had proved up the pre-emption as aforesaid, he returned to his residence in Texas, and as far as respondent knows, went on in the even tenor of his ways.

Respondent admits, that the said witnesses Cryer and Waggoner attended at the Land Office for the purpose of establishing and proving up said pre-emption at the request of this respondent, and that he, this respondent, paid the receiver the entrance money for said quarter section of land.

Respondent admits that he made the applications to said Hemphill, and in person, and once by agent, to comply with the conditions of said bond as hereinbefore stated, that on the first application, said Hemphill, owing to the bad condition of his health could not attend, and that upon the second application this respondent made the agreement with said Hemphill as herein stated and no other. Respondent denies that he made any such representations as charged in said bill to induce said Hemphill to prove up said pre-emption.

Respondent denies that said Samuel Hemphill was deceived by any false representations made to him by this respondent or induced thereby to believe that the cultivation and improvement would not interfere with the improvement of any person, nor did this respondent make any false representations to induce said Hemphill to believe that said improvement was on said quarter section.

Respondent admits that by the decision of the General Land Office, a patent was issued to him as the assignee of said Samuel Hemphill, upon the ground that the pre-emption right of said Hemphill being under an act prior in date and right to the act under which said complainant claimed his said pretended pre-emption, a true copy of which decision is exhibited in and by said bill, and respondent exhibits herewith a true copy of said patent, marked Exhibit Z No. 2, and holds the original subject to the order of the Court and inspection of the parties. Respondent admits that after the said entry was made he procured the usual transfer in said case from said Hemphill to himself, and transmitted the same to the Land Office Department, whereupon said patent was

issued, a copy of which is hereinbefore made Exhibit Z No. 2. But respondent denies that he procured the same by fraud, or that he purchased the same after the entry so made as aforesaid, but on the contrary thereof, avers that he purchased said pre-emption right at the time in that respect hereinbefore mentioned and procured the said transfer to be made in the manner usual in such cases.

Respondent admits to be true, that he has instituted his action of ejectment on the common law side of this Court, for the recovery of said quarter section of land so covered by said patent, as aforesaid.

And this respondent for further answer to said bill of complaint, says, that he has been informed and believes it to be true, that Andrew Hemphill and Samuel Hemphill respectively, settled upon, improved and cultivated portions of said Prairie, some time in the year 1826, and each of them from thence until the time of respondent's purchase, as hereinafter stated continued to live upon, hold possession of and cultivate their said improvement respectively, and each of them being over the age of twenty-one years, and the head of a family actually resided upon, cultivated and raised crops upon their said improvements during the year 1829, and from thence, continued so to reside upon and hold possession thereof without any interruption, cessation or suspension, until the year 1833, by virtue of which cultivation, possession, residence and improvements, they were each respectively entitled to pre-emption rights under the Act of Congress, for that purpose, passed on the 29th day of May, 1830, that in the fall of the year 1833, respondent came to this country and purchased the respective improvements and pre-emption rights of said Andrew and Samuel, paying therefor about the aggregate sum of $1,600, and then and there at the time of said purchase, took from each of said settlers, a bond or written obligation conditioned that when the proper time arrived for that purpose, that they would prove up and establish their said pre-emption rights for the use and benefit of respondent, that immediately after his purchase, respondent removed to, settled upon, and took possession of said improvements and opened a large cotton farm including said improvements, and has continually from thence, continued to hold possession of and cultivate the same until the present day, except such part thereof as he has been dispossessed of by said complainant, as hereinafter stated. That at the time said respondent purchased said improvements, the improvemement and farm occupied and cultivated by the overseer and slaves of said Jones, lay near by and adjacent thereto, being the same farm and improvement afterwards sold by said Jones to said complainant, that none of the land situated in said Prairie nor those adjacent thereto, were surveyed until some time in the year 1840, and until such survey, neither the said complainant nor this respondent could ascertain or determine upon what particular sections or quarter sections their respective farms would fall, that after said surveys were so made it

appeared that a part of said complainant's improvement and about 40 acres of the field cultivated by respondent being part of the improvement so made by Samuel Hemphill fell and was situated upon said North-east quarter of section eighteen, and about eighty acres of the farm and improvement held and cultivated by respondent, and included within his cultivated field, and proved to be situated upon the South-east quarter of said section eighteen, the part thereof enclosed and cultivated by respondent, lying on the East side of said last mentioned quarter, that before said surveys, the East half of said two quarter sections had been in possession of respondent, and was considered as part of respondent's farm and the residue of said two quarters had in like manner been usually tacitly deemed and considered as constituting part of complainant's, and after said land was surveyed, and the situation of said farms were ascertained, respondent was willing that said two quarters should equally be divided by a North and South line, by which division each party would have secured the whole of his improvement, and respondent well hoped that a compromise and adjustment of that kind could have been effected, but after said survey and before respondent had attempted to have a pre-emption proved up on either of said quarters, said complainant in fraud of the rights of this respondent and without the knowledge or consent of respondent, presented his petition to the Congress of the United States, praying for the passage of an act giving him a right to enter about 25 sections of land covering and including the whole of respondent's farm and improvement, except about one quarter section in and by which petition, and the letters and papers accompanying the same, said complainant falsely and fraudulently represented, stated and induced the members of Congress to believe that no person other than himself, occupied or owned any improvement or had any right of preference on any part of either of said sections, and that body being misled and deceived by such false and fraudulent representations, actually passed the act, and granted the privilege, but fortunately for respondent, said complainant (although he intended to obtain respondent's farm) made a mistake in the description of the Township and range, and having discovered his mistake, at the next session of Congress, said complainant applied to have said mistake rectified, but in the meantime respondent had become apprised of said complainant's fraudulent proceedings in the premises, and having caused the facts to be properly represented, showing that almost the whole of respondent's farm was included within the boundaries of the lands sought by said complainant, Congress refused to correct said mistake and said complainant was thereby thwarted and defeated in his said fraudulent and dishonest scheme to cheat and defraud respondent. That of the said survey and the said fraudulent attempt on the part of said complainant to obtain the passage of the said Act of Congress, and after the plot of the said Township had been returned to the said Land Office, before the same had been offered for sale, and

when the proper time arrived for proving up pre-emptions in said Township, respondent made application to said Samuel Hemphill to prove up and establish his said pre-emption according to his said contract and obligation made as aforesaid, and for which he had been paid by respondent many years before that time, and upon such application being made, said Samuel manifested every willingness to do so, but as he had shortly before been severely injured by a fall from a horse, he said it would endanger his life to undergo the fatigue of a journey to Arkansas, and respondent being fearful that said Samuel might delay the matter until said lands should be offered for sale, respondent, as a further inducement to him to undergo said journey, agreed that if he would immediately proceed to Arkansas, and comply with his said obligation, respondent whenever he should acquire a valid title to said North-east quarter, and obtain peaceable possession thereof, would pay him the further sum of $200 00. Respondent had long before that time fully paid said Samuel for his said improvement and right of preference, and said further sum of $200, was not considered any part of the price of said pre-emption but respondent proposed to give said Samuel said further sum rather than have any further delay lost by his death or some further or increased disability to attend to business or some other unforseen accident, said right might be forfeited by a failure to prove the same up within the time limited by law and accordingly in due time said Samuel proceeded and did come to Arkansas, and prove up and establish his said right of pre-emption in the manner shown by the affidavits on file in the Land Office, in that behalf and thereupon said North-east quarter was entered, transferred and patented in the manner hereinbefore stated, and respondent expressly avers, that there was no fraud, accident or mistake in the issuance of said patent or in any of the steps or proceedings taken or adopted to obtain the same, and that he is now the absolute owner of said North-east quarter, both at law and in equity. Respondent further answering, says, that shortly before the said pre-emption was so established in the name of said Samuel, said complainant applied at said Land Office to prove up a pre-emption in the name of Massach H. Jones, who many years before that time had abandoned the United States, removed to, and then resided in the said foreign Republic of Texas, and had, as respondent has been informed and believes actually taken the oath of allegiance to the Republic of Mexico, under the said pre-emption act of the 29th May, 1830, and according to the proof then introduced by said complainant upon said application said Land Officers were willing and offered to grant a pre-emption in the name of said Jones, under said last mentioned act, either upon said North-east or upon said South-east quarter of said section 18, but said complainant made choice and elected to take and have a pre-emption granted to said Jones upon said South-east quarter, which included about 80 acres of land, which respondent then, and for many years previous there-

to, had enclosed and in cultivation, and thereupon said Land Officers granted and allowed the same upon said South-east quarter and said complainant now owns and holds possession of said South-east quarter, the same having been proved or entered and paid for by said complainant (in the name of said Jones) for his (complainant's) own use and benefit, and afterwards transferred and patented to him, and at the same time said pre-emption was granted to said Jones upon said South-east quarter. Said land officers upon the proof then introduced before them by said complainant by mistake through the fraud practised them by said complainant and in total ignorance of the fact that any other person had an improvement upon or was entitled to a right of preference in the entry thereof, under any prior act granted and allowed to said complainant in his own name by virtue of his own pretended settlement and cultivation upon said North-east quarter, under the pre-emption act of 1838, but after the proof in support of said Samuel Hemphill's pre-emption was produced to said land officers and they were fully advised in relation to the matter they cancelled and set aside, the pre-emption so granted to said complainant and allowed the pre-emption of said Samuel, as hereinbefore stated. Respondent positively denies that said complainant ever gave him any notice whatever, of his intention to attempt to prove up a pre-emption upon either of said quarter sections, but from said complainant's previous conduct in relation to the matter and particularly from his fraudulent and deceptive attempt to obtain the passage of the said Act of Congress as hereinbefore stated for some time before said complainant so attempted to prove up said pre-emption respondent was convinced and believed that said complainant would resort to any means or adopt any mode of his own or the ingenuity of his advisers might suggest, (no matter how fraudulent, false, deceptive or dishonest, the same might be) to carry out and accomplish or further his design to cheat and defraud respondent in respect of the lands aforesaid, and would take every advantage which fraud and dishonesty could bring to his aid. Respondent in further answer states and charges, that on the next morning after said pre-emption was granted to, and entry made in the name of said Samuel Hemphill, respondent and said complainant met in the said Land Office, and the Receiver of said office, in the presence of both, proposed that the dispute and difficulty existing between them in regard to said two quarter sections, should be amicably adjusted and compromised by making an equal division of said two quarters, by a North and South line, giving and allotting the East half of each to respondent, and the residue to complainant, by which compromise and division, each one of them would have obtained, secured, and acquired title to the whole of the land covered by his improvements on said quarters, and although respondent was confident that he could hold said North-east quarter, and that the same was of much greater value than the other, yet for the purpose of obviating any further litiga-

tion or dispute with a neighbor, he at once expressed a willingness, and was then and there ready and willing to adjust and compromise the matter upon the terms proposed by said Receiver, and so stated to him, but complainant could not brook the idea of being defeated in his long cherished design of cheating and defrauding respondent out of the whole of said two quarters, and thereby to deprive respondent of his valuable improvemeets thereon, not only rejected and refused to accept said proposition, but became and was very indignant thereat,—swore he would have the whole or none, and immediately left the office.

That immediately after said pre-emption was granted in favor of said Samuel Hemphill, said complainant protested against the said decision of said Register and Receiver, in granting and allowing the same, and in rejecting and cancelling the one claimed by him on the same tract of land, and appealed from their said decision to the Commissioner of the General Land Office, whereupon said appeal was granted, and all the papers, evidence and facts were transmittnd to the General Land Office for a revival of said decision, and said Commissioner afterwards upon such appeal, after giving respondent and complainant both a full and fair hearing, and from a thorough investigation of all the facts, and being fully advised in the premises sustained, and in all things affirmed the decision of said district land officers, and decided and determined that the said pretended pre-emption of said complainant should be and the same was thereby rejected and cancelled, and that a patent should be issued to respondent for said North-east quarter, by virtue of the entry made under the pre-emption of said Samuel Hemphill, and the same was in pursuance thereof, afterwards accordingly issued, as hereinbefore stated and shown.

Respondent further says, that after said pre-emption was so proved up and allowed to said Samuel Hemphill, and after he had fully complied with the conditions thereof, respondent cancelled and destroyed the obligation executed by said Hemphill to him, at the time he purchased said improvement and right of pre-emption, and the same cannot therefore be produced.

Respondent further states, that a true copy of all the papers presented by said complainant to obtain said Act of Congress, duly certified, will be hereafter filed, marked exhibit (X No. 2,) and when so filed, the same is hereby prayed to be taken as a part hereof.

And complainant has taken forcible possession of the improvement of said respondent upon said North-east quarter and still holds the same. This defendant denies all manner of fraud, unlawful contrivances or confederacy, wherewith he is in and by said bill charged, without this, if there is any other matter, cause or thing in said bill contained material or necessary for this defendant to make answer unto and not herein and hereby sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge

and belief of this defendant, all of which matters and things this defendant is ready and willing to maintain and prove as this honorable Court shall direct, and prays to be hence dismissed with his reasonable costs in this behalf, most wrongfully sustained.

CURRAN & WATKINS,
HUBBARD & HEMPSTEAD,
for Deft.

COUNTY OF LAFAYETTE, S. CT.

I, Josiah Garland, do state on oath that the facts contained in the foregoing answer, so far as the same are stated on my own knowledge, are true, as therein set forth and so far as the same are stated on the information of others, he believes them to be true as therein set forth.

J. GARLAND.

Sworn to and subscribed before me, this 8th day of July, A. D. 1847.

JOHN WAGGONER,
J. P.

But the Court refused to permit said defendant to file said answer at that time, to which opinion of the Court the said defendant by his counsel excepted, and thereupon the said defendant offered to read said answer, marked A No. 1, hereinbefore referred to. But the Court ruled that said defendant had no right to read said answer, and refused to consider the same on said application for said injunction, and to which opinion of the Court, the said defendant by his counsel excepted, at the time and to save his said exceptions, prays that this his bill of exceptions to the decision of the Court in refusing to permit said defendant to file and read said answer, may be signed, sealed and made a part of the record in this cause, which is accordingly done, and the same signed and sealed and made a part of the record this 10th day of July, A. D. 1847, being a day of the same term, at which said decisions were made.

CHRISTOPHER C. SCOTT,
Judge, &c. [SEAL.]

Filed July 10th, 1847.

J. DOUGLASS,
Clerk.

By J. THOMPSON,
D. C.

Endorsed upon the answer of defendant to complainant's bill, which said answer has first been copied in the foregoing exceptions of defendant, is the following in words and figures, to wit:

"Presented and rejected, July 9th, 1847.

J. DOUGLASS,
Clerk.
By J. THOMPSON,
D. C.

Also the filing of said answer, in words and figures following, to wit:

Filed July 10, 1847.

J. DOUGLASS,
Clerk.
By J. THOMPSON,
D. C.

Said motion to rule complainant to answer, &c., appears in words and figures following, to wit:

LAFAYETTE CIRCUIT COURT IN CHANCERY, *July Term*, 1847.

WILLIAM WYNN,
vs.
JOSIAH GARLAND. } In Chancery.

And said defendant comes and moves the Court for a rule upon the complainant to except or reply to the answer filed in this cause during the present term.

HUBBARD & HEMPSTEAD,
WATKINS & CURRAN.

Filed July 10, 1847.

J. DOUGLASS,
Clerk.
By J. THOMPSON,
D. C.

And after the filing of said exceptions, the following proceedings were had on the 10th day of July, 1847, which appears of record in words and figures following, to wit:

WILLIAM WYNN,
vs.
JOSIAH GARLAND. } Injunction.

Came the parties by their respective solicitors, and on motion and by consent and argument of parties here in open Court, ex-

pressed, it is ordered that said complainant file his exceptions or replication to the answer of said defendant herein at least sixty days before the first day of the next term of this court.

And by like consent and argument it is further ruled and ordered by the Court, that both of said parties have, and leave is hereby granted unto each of them, to take the depositions of witnesses, generally, before any judge or justice of the peace of this State, or of any State in the United States or Territories thereof, to be read in evidence, either to sustain or dissolve the injunction granted herein, or to be read in evidence upon the final hearing of this cause, in like manner and with like effect, as if this cause had been regularly set down for final hearing upon issues formed herein.

Afterwards, at a Circuit Court in Chancery, begun and held in and for the County of Lafayette, in the State of Arkansas, at the Court House in the town of Lewisville, in said County, on Monday the 3d day of January, 1848, the Hon. Christopher C. Scott, Judge, presiding, the following proceedings were had on the 6th day of January, 1847, and appear of record in words and figures following, to wit:

WILLIAM WYNN, Complainant,
vs.
JOSIAH GARLAND, Defendant. } In Chancery.

At this day came said parties by their respective solicitors, and on motion of said defendant, leave is granted unto him to amend his answer in this behalf, in respect of certain matters of form, and thereupon said answer is so accordingly amended by interlineation, and re-sworn in open Court.

And on motion of said complainant, leave is granted him to file his replication, and the same is accordingly filed. Whereupon said complainant files his affidavit, for a continuance of this cause, upon consideration whereof, it is ordered, that this cause by reason thereof be and the same is hereby continued.

And by consent of parties it is ordered, that this cause be set down for final hearing and determination at the next term of this Court, upon the bill, answer, replication, exhibits and testimony, taken and to be taken, reserving to each party, any exceptions to any such testimony.

And thereupon said complainant files his affidavit and moves the Court for leave to retake the deposition of Jacob Waggoner, a witness on his part heretofore examined in this cause, and the Court to be more fully advised concerning said motion, takes time to consider thereof.

The said amendment of defendant to his said answer, appears in words and figures following, to wit:

This respondent answers the allegations contained in said bill, and makes the discovery thereby sought in respect of his own title to the land in controversy in this behalf, insisting and protesting

that said complainant has not in and by his said bill, made such a case, or stated such facts, or in any manner entitle him to any part of the discovery or relief thereby sought, that said complainant wholly fails to show any title in himself, and is therefore not in any wise entitled to any discovery in respect of or relief against the title of this respondent:—that this Court is not invested with any authority, power, or jurisdiction to revise, set aside or correct the decision of the Register and Receiver of the Land Office of the United States, at Washington, and that by the law of the land, the decision, adjudication and judgment of the said Register and Receiver in so granting and allowing the said pre-emption right to, and in the name of said Samuel Hemphill, is final and conclusive, and cannot be enquired into, or in any manner questioned, changed, modified, set aside, or corrected by this Court or any other tribunal. And so far the reasons aforesaid, and other reasons on the face of the said bill appearing, this defendant desires that it shall distinctly appear and be understood, that he makes this answer, protesting in manner aforesaid, and insisting and hereby claiming the like benefit and advantage in respect of the objections aforesaid, and on account and by reason of all other substantial defects in said bill, as if he had formally demurred thereto, and to that end, respondent insists and submits that said bill be dismissed, and the prayer thereof denied, &c.

Amended and re-sworn in open Court, this 6th day of January, 1848.

J. D. JONES,
Clerk.
By R. F. SULLIVAN,
Dept.

Said replication appears in words and figures following, to wit:

LAFAYETTE CIRCUIT COURT,
In Chancery, January, 1848.

WILLIAM WYNN, Complainant,
vs.
JOSIAH GARLAND, Defendant.
} Bill for injunction.

And the complainant says, that the answer of the defendant heretofore filed herein, is insufficient, uncertain, immaterial and untrue, but that the matters set forth by complainant in his bill of complaint are certain, true and sufficient as therein stated, to entitle him to the relief prayed, and this he is ready to aver, &c., as this honorable court shall direct.

HIGHTOWER, FIELD,
COCKE, PIKE & BALDWIN,
For Complainants.

Filed January 6th, 1848.

J. D. JONES, *Clerk.*

Said affidavit for a continuance of this cause made by said complainant, appears in words and figures following, to wit:

IN THE LAFAYETTE CIRCUIT COURT,

On the Chancery side thereof, January Term, A. D. 1848.

WILLIAM WYNN, Plaintiff,
vs.
JOSIAH GARLAND, Defendant. } In Chancery.

The said complainant moves the court to continue this cause until the next term of this court, and for cause of continuance states the following: That Samuel Hemphill and Rushton V. R. Green, of the County of Sevier in the State of Arkansas, are material witnesses for him, and that he cannot go to trial in this cause without the benefit of their testimony: that he can prove by said Hemphill, that at the time he made a certain affidavit in which he stated that he believed he cultivated the North-east quarter in section eighteen in township sixteen of range twenty-five west, mentioned in this affiant's bill of complaint, he did so from looking at a paper, shown him at the time, purporting to be a map or plat of the land in question, that he did not know whether said map was correct or incorrect, and that he, said Hemphill, had not at that time, traced the lines according to the survey of the public surveyor of the United States: That said Hemphill, a short time ago, and since the institution of this suit, made a personal and careful examination of said quarter section above mentioned, and that he did so by the aid of James P. Jett, who was then and there present and surveyed said land, and traced the lines, with compass and chain,—and that after examining said lines and land, said Hemphill has become thoroughly satisfied that he never did live on or cultivate at any time, the quarter section aforesaid, and that said Hemphill will prove the above facts, and also the further fact, that the map or plat presented to him as aforesaid, was false and wholly incorrect, and that he was imposed upon by said defendant, and deceived and misled by the said map and defendant's representations. He can further prove by said Hemphill, that at the time he made the affidavit aforesaid, he was in Sevier County aforesaid, and had not examined the land aforesaid, since it was surveyed, and that on being requested to make the affidavit aforesaid, he proposed said Garland as his agent to pay his expenses, and he would go to the land aforesaid, and that he would thereby enable himself to swear advisedly, but said Garland or his agent declined paying his expenses, assuring said Hemphill that the map or plat so presented to him was correct.

He can also prove that the main and material facts set forth in defendant's answer are wholly untrue, by said Hemphill.

This affiant further states that he can prove by the said Rutson

V. R. Green, that there was a map or plat presented to said Hemphill at the time above mentioned, and that said Hemphill was anxious to go to the land aforesaid, provided said defendant or his agent would defray his necessary expenses in so doing, and that the said defendant or his agent, then present, would not consent to do so, but insisted on said Hemphill's signing and swearing to the affidav't in the form it now is.

This affiant cannot prove the same facts by any other witness as he knows of, he has used due diligence to procure the testimony of said witness, that he sued out a didimus to take the depositions of the witnesses aforesaid, but failed to get them at the time and place fixed upon in the notice; that he also gave a notice to said defendant, that he would take depositions of witnesses at the term of Lewisville some time in the month of November or December last, and that before the day arrived for taking said depositions, Jesse Douglass, the prior clerk of this court, departed this life, so that this affiant could procure no commission, and consequently he could not secure the testimony of Samuel Hemphill, who was then and there present, and he further states, that after he had failed to procure the testsmony of those witnesses, he gave notice to the defendant, that he would take their testimony at the town of Washington on the 22d or 23d of December, 1847, and that he could not procure their attendance at that place, and was disappointed again. He cannot prove the same facts by any other witness that he knows of, nor can he go safely to trial of this cause, on either a motion to dissolve the injunction in this cause or on the merits of the cause. He has reason to believe that he can procure their testimony by the next term of this court, and he further saith, that this continuance is not asked for the purpose of delay, but that justice may be done.

WILLIAM WYNN.

STATE OF ARKANSAS, *County of Lafayette.* } S. Ct.

On this 5th day of January, 1848, personally appeared in open court, William Wynn, who being sworn, states on oath, that the matters and facts set forth in the foregoing motion and statements are true.

WILLIAM WYNN.

Attest,

J. D. JONES,
Clerk.

Filed in open Court, this 6th, day of January, 1848.

J. D. JONES,
Clerk.

LAFAYETTE CIRCUIT COURT,

January Term, A. D. 1848.

WILLIAM WYNN, Complainant,
vs.
JOSIAH GARLAND, Defendant. } In Chancery.

The said complainant comes and states to the court, that since the last term thereof, he has taken the testimony of sundry individuals to be read in evidence on the trial of this cause, and that among the number of witnesses sworn and examined by him, are Jacob Waggoner and James P. Jett.

He further states that James P. Jett is a surveyor, and as such was called on to run the lines of the quarter section in controversy in the cause aforesaid, that he run said lines sometime in the summer of last year, in the presence of said Jacob Waggoner, Andrew Hemphill and others, and a few days thereafter, complainant had his testimony taken, together with that of others; that sometime thereafter, say in the month of November last, as well as complainant can now recollect, said James P. Jett traced the lines of the quarter section in said bill mentioned with compass and chain, and that James S. McLaughlin and Samuel Hemphill, who are material witnesses for this complainant, were then and there present, and complainant avers that it is material to his cause, that said Jett should be re-examined as to how his survey last made as aforesaid, agreed with the one he just made, and whether he found upon the second survey, the lines, courses, corner trees, stakes and distances to agree with his first survey made in presence of said Jacob Waggoner and others as above mentioned.

And this complainant further states, that it is material to him on the trial or hearing of this cause, that the said Jacob Waggoner should be examined the second time, that since said Waggoner was examined, he (complainant) has understood that he can prove other distinct and material facts by him, and which have come to the knowledge of this complainant since the said Waggoner's testimony was taken. He deems the additional testimony of said Waggoner material to the issue in this cause, and prays this honorable court for leave to re-examine the said James P. Jett, and the said Jacob Waggoner, and as in duty bound, &c.

WILLIAM WYNN.
E. HIGHTOWER & others,
his Solicitors.

STATE OF ARKANSAS, *County of Lafayette.*

I, William Winn, do solemnly swear, that the foregoing facts are true.

WILLIAM WYNN.

Sworn to and subscribed in open Court, this 6th of January, 1848.

J. D. JONES,
Clerk.

Filed in open Court, this 6th day of January, 1848.

J. D. JONES,
Clerk.

And at the same term of said court last above mentioned, to wit, on the 4th of January, 1848, the following proceedings appear of record, to wit:

WILLIAM WYNN, Complainant,
vs.
JOSIAH GARLAND, Defendant. } In Chancery.

At this day came said parties by their solicitors, and on motion it is ruled and ordered that they have, and leave is hereby granted unto them to take the depositions of witnesses generally, before any judge or justice of the peace of any of the States of the United States or territories thereof to read in evidence on the final hearing of this cause, and that commissions issue for that purpose.

And at the same time, to wit: on the 10th day of January, 1848, the following entry appears of record, to wit:

WILLIAM WYNN,
vs.
JOSIAH GARLAND, } In Chancery.

Now on this day came the parties aforesaid, and the said William Wynn having filed his affidavit in this cause for leave to examine James P. Jett and Jacob Waggoner a second time, and upon consideration of said motion it is ordered that the said complainant have leave to take the examination of the said James P. Jett a second time in the manner stated in said application, and the said Jacob Waggoner be examined, reserving the question as to the complainant's right to examine said Waggoner for the future consideration and determination of this court, and upon motion of said complainant, it is ordered that James S. Conway be, and he is hereby appointed to survey the premises in controversy in this suit at the costs of the complainant.

Afterwards, to wit: on the 30th April, 1849, at a court begun and held on the 30th day of April, 1849, at the Court House, in the town of Lewisville, and the County and State aforesaid, the following proceedings among others herein were had, to wit:

WILLIAM WYNN,
vs.
JOSIAH GARLAND. } Injunction.

Came the parties by their respective solicitors, and on motion and by consent it is ordered, that either party have leave to open and publish his depositions now on file in this cause, reserving all the rights of the parties in relation thereto, and especially it is agreed that the following do not prevent the taking of other testimony.

And afterwards the following entry appears of record, to wit: on the 2d day of May, 1849, in words and figures following, to wit:

WILLIAM WYNN,
vs.
JOSIAH GARLAND.

Came the parties in proper person and here in open Court, agree as follows: which agreement is by their consent, ordered to be made of record, that all the matters involved in this suit, and all other suits and controversies between the parties in this Court, and all matters in controversy between the parties aforesaid in a certain suit now pending in the Pulaski Circuit Court in Chancery, wherein said Wynn is complainant, and said Garland and the State of Arkansas, defendants, and also all matters in dispute, and their conflicting claims to the East half of the North-east quarter of section 19, Township 16 South range twenty-five West, be submitted and are hereby submitted to the final and absolute arbitration and decision of James M. Curran, and Albert Pike, Esquires, and of such third person, as they may select in the contingency hereinafter mentioned.

That said arbitrators shall hear and determine all such matters, in accordance with law and the facts, as though sitting as Chancellors and Judges, upon personal view of all the premises in dispute, all testimony heretofore taken at a time when it could be legally taken, and such as shall be taken or re-taken (which may be done by order of the arbitrators at their discretion,) within three months hereafter by either of the parties upon the papers in the said causes, and any other papers relating to said matters, and upon the written arguments of counsel, if desired to be filed or produced before them. That said arbitrators shall have power to examine or cause to be examined, the parties themselves, or witnesses, all testimony shall be reduced to writing, further testimony within said term of three months, may be taken by either party without commission

upon such notice in writing, as is required by law, which testimony may be enlarged by the arbitrators upon such cause, as they shall deem sufficient. And the arbitrators may appoint a commissioner or commissioners to take or retake testimony (to such testimony as is already taken, at a time when it could legally be taken) no exception shall be considered, except those to the competency of the witnesses, or the competency and relevancy of the evidence itself, if the opposite party had notice of the taking and an opportunity to cross-examine.

If the arbitrators disagree, either as to any single question, or several questions of law or fact, or the general result and award, they shall call in a third person, being a counsellor in Chancery, of repute and learning, not engaged or interested in any of said causes, and thereupon the majority shall decide.

The award and judgment of said arbitrators shall be drawn up in writing, and shall finally settle and determine this suit and all other suits and controversies in this Court and said Pulaski Circuit Court, and all controversy in regard to the said East ½ of the North-east ¼ of section 19, and shall be entered as a decree as between the parties in said Pulaski Circuit Court, and also shall be entered as the decree of this Court in this case. It shall settle all questions as to costs, and finally determine all the matters aforesaid, and shall be final, absolute and conclusive, without right of appeal or exceptions. All suits aforesaid, shall be continued until such award is made and entered as a decree. When the matters therein being settled by such decree, they shall be dismissed and the compensation of said arbitrators shall be paid equally by the parties, being fixed by the arbitrators themselves, subject to correction by the Court, if excessive. The costs of copying all papers required by the arbitrators, shall be paid equally by the parties.

Which agreement is accordingly ordered to be made of record, and to stand as the judgment, order, and decree of this Court, both on the common law and chancery sides thereof in all the suits between the said parties, and by consent, it is ordered that the arbitrators have leave to withdraw from the files, all depositions and exhibits or other papers necessary for them to be returned at or before the next term.

And afterwards, to wit: on the 4th day of May, 1849, the order of said arbitrators is entered of record, which appears in words and figures following, to wit:

WILLIAM WYNN,
vs.
JOSIAH GARLAND.

Came the parties by their respective solicitors, and on leave asked and obtained, file the order of the arbitrators in this cause, appointing John D. Trimble and Charles Witter, of the County of

Hempstead, and James K. Young, and James H. Caruthers, of the County of Lafayette, as commissioners in this cause and all other causes and actions, embraced in said submission, to act jointly or separately in taking depositions, to be used and read before the arbitrators.

Afterwards, to wit: on the 28th day of October, 1851, at a Circuit Court in Chancery begun and held at the Court House, in the town of Lewisville, County and State aforesaid, on Monday the 28th day of October, 1851, presiding, the Honorable John Quillen, John, the following order appears of record, to wit:

WILLIAM WYNN, Complainant, *vs.* JOSIAH GARLAND, Defendant. } Bill for title to N. E. ¼ Sec. 18, T. 16 S. R. 25 W.

JOSIAH GARLAND, Complainant, *vs.* WILLIAM WYNN, Defendant. } Bill in respect of ditches.

Be it remembered, that on this day came said parties and also came Albert Pike and J. M. Curran, who were, by order of this Court, on the 2d day of May, 1849, appointed arbitrators, with power and authority to determine the two suits above exhibited, together with other matters of controversy and suits between said parties pending on the law side of this Court, and it appearing to the Court that said Curran declines acting as such arbitrator, it is by consent of parties ordered that said arbitrators be discharged, and that said suits above mentioned, be replaced upon the docket, and progress to final hearing before this Court.

Afterwards, to wit: on the 6th day of May, 1852, at a Circuit Court in Chancery begun and held in the town of Lewisville, at the Court House in the County of Lafayette and State of Arkansas, on Monday the 26th day of April, A. D. 1852, presiding the Honorable Shelton Watson, Judge, the following decree is entered of record, which appears in words and figures following, to wit:

WILLIAM WYNN, Complainant, *vs.* JOSIAH GARLAND, Defendant. } Bill for title to N. E. 18, T. 16 S. R. 25 W.

Be it remembered, that on this day this cause came on for final hearing and determination and adjudication upon the bill and the exhibits therein referred to, and upon the answer and the exhibits and documents, two transcripts certified by the Commissioner of the General Land Office therein referred to, and upon the depositions of Jacob Waggoner, John Bradley, Simon S. Higgs, Andrew Hemphill, James P. Jett, Andrew Hemphill, James B. Hemphill, Thomas B. Haynie, Joseph Camp, Willis Blalock, F. E. Cartright,

Thomas Wright, R. H. Scott, Thos. W. Scott, F. G. Stone, Thomas Edwards, Jacob Waggoner, Charles E. Moore, John Waggoner, James P. Jett, Thomas B. Haynie, L. B. Collins, R. F. Sullivan, L. B. Fort, A. Byrne, Jesse Tealock, R. V. R. Green, A. Black, Jas. Penny, Benj. P. Jett, S. T. Sanders, John S. Burt, Samuel Moore, B. F. Hempstead, James S. McLaughlin, George Conway, James S. Conway, James McLaughlin.

Taken and read on the part of said complainant. The deposition of John W. Cocke. taken by complainant, and on file was not read, but withdrawn, and upon the depositions of Morgan Cryer, George Brinley, William Moss, M. Moss, D. T. Witter, J. M. Jones, Jacob Barkman, James Gift, Wm. Crabtree, J. M. Reed, J. M. Williams, H. A. Blevins, Wm. Garland, Morgan Cryer, Thos. H. Edwards, Joshua Howard, James Abrahams, John G. Fuller, Hugh F. Young, John H. Peake, Rev. J. W. McKinzie, W. H. V., John Stiles, E. West, Geo. H. Bayley, and A. W. Alexander, taken and read on the part of the defendant. The defendant, on the hearing produced and read to the Court, the original patent for the land in controversy, a copy of which, is exhibited with the answer, and at the time, depositions and other testimony on the part of the complainant introduced, the defendant objected to the competency and relevancy thereof, and particularly to all such portions thereof, as attempts or conduce to show that the decision of the Register and Receiver, in respect to the pre-emption of Samuel Hemphill was founded, in mistake of the facts, and reserved the right to insist upon such objection on the argument of the hearing or upon any appeal in this behalf.

And upon the said cause being so submitted, in the manner upon the pleadings and evidence aforesaid, the Court hereafter hearing the argument of counsel, and being fully advised in the premises, is of opinion and doth find and determine that said defendant, Josiah Garland, is the absolute owner of the said tract of land mentioned in said bill, to wit: the North-east quarter of section eighteen, (18,) in Township sixteen, (16,) South of range twenty-five (25) West, both at law and in equity, and entitled to the possession thereof, and said complainant, William Wynn, has no sufficient claim thereto, and is not entitled to any part of the relief sought, and prayed for in and by his said bill of complaint, in this behalf, that said bill ought to be dismissed, and the prayer thereof denied and refused, and that the injunction in this behalf granted, ought to be dissolved, and said Garland permitted and allowed to proceed to judgment and execution in his said action at law, for recovery of the possession of said tract of land.

It is therefore ordered, considered, adjudged and descried by the Court here, that the said bill of complaint of the said William Wynn, be, and the same is hereby absolutely dismissed, and the prayer thereof denied and refused, that the injunction heretofore granted and in force in this behalf, be, and the same is hereby dis-

solved, vacated, and set aside, that said Garland be permitted and allowed, and be at liberty to proceed to judgment and execution in said action of ejectment, and that the said Wynn, do pay said Garland, all his costs in this behalf expended.

It is further considered and decreed, that said Wynn do pay to said Garland, and that said Garland do recover against said Wynn, such damages as he has sustained by reason of said injunction, but because it is unknown to the court what amount of damages said Garland has sustained, and as it is proper that such damages should be assessed by a jury, it is ordered that a jury be empannelled for that purpose, and because there is not sufficient time at this term to make such assessment, it is ordered, that a writ of inquiry issue for that purpose, returnable at the next term of this court.

Said copy of said original patent referred to in the foregoing decree, and also made an exhibit in defendant's answer to complainant's bill, appears in words and figures following, to wit:

[*Pre-emption Certificate, No.* 4672.]

UNITED STATES OF AMERICA.

To all to whom these presents shall come, greeting:

Whereas Josiah Garland, Assignee of Samuel Hemphill, has deposited in the General Land Office of the United States, a Certificate of the Register of the Land Office at Washington, whereby it appears, that full payment has been made by the said Samuel Hemphill, according to the provisions of the act of Congress of the 24th of April 1820, entitled "an Act making further provisions for the sale of the public lands for the North-east quarter, South of Red River, of section Eighteen in Township Sixteen, south of range twenty-five West, in the district of land subject to sale at Washington, Arkansas, containing one hundred and sixty acres, according to the official plat of the survey of the said lands returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said Samuel Hemphill. Now know ye, that the United States of America, in consideration of the premises and in conformity with the several acts of Congress, in such case made and provided, have given and granted, and by these presents, do give and grant unto the said Josiah Garland, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights and privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging unto the said Josiah Garland, and to his heirs and assigns forever."

In testimony whereof, I, John Tyler, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed. Given under my hand at the City of Washington, the tenth day of January, in the year of our Lord one thousand eight hundred and forty-

four, and of the independence of the United States, the Sixty-eighth.

By the President,

J. TYLER.

Recorded volume 9, page 247.

J. R. WILLIAMSON,
Recorder of the General Land Office.

Filed 5th October, 1846.

JESSE DOUGLASS,
Clerk.

And afterwards, to wit: on the 7th day of May, 1852, complainant files his motion for an appeal, in words and figures following, to wit:

IN THE LAFAYETTE CIRCUIT COURT,

At the Spring Term, A. D. 1852.

WILLIAM WYNN, Complainant,
vs.
JOSIAH GARLAND, Defendant. } In Chancery.

And the said William Wynn comes and prays the Court here to grant him an appeal in this case to the Honourable the Supreme Court of the State of Arkansas, upon the affidavit which follows:

PIKE & CUMMINS,
Solicitors for Wm. Wynn.

Lafayette, S. Ct.

IN THE LAFAYETTE CIRCUIT COURT,
At Spring Term, A. D. 1852.

WILLIAM WYNN, Complainant,
vs.
JOSIAH GARLAND, Defendant.

I, William Wynn, do solemnly swear, that the appeal which I pray for in the above entitled case, is not made for vexation or delay, but because I do verily believe that I am aggrieved by the decision and decree of the Circuit Court of Lafayette County, Arkansas, in that case rendered, so help me God.

WILLIAM WYNN.

Sworn to and subscribed in open court, in the Lafayette Circuit Court in Chancery, this 7th day of May, A. D., 1852.

A. BYRNE,
Clerk.

Filed May the 7th, 1852.

A. BYRNE,
Clerk.

Wherepon the following order is entered of record on the 7th day of May, 1852, granting the prayer of said motion, which appears in words and figures following, to wit:

WILLIAM WYNN, Complainant,
vs.
JOSIAH GARLAND, Defendant.

This day comes the said William Wynn, and files his motion and prayer for appeal from the decree in this cause, to the Supreme Court of the State of Arkansas, and files therewith his affidavit that the appeal so prayed for is not made for vexation or delay, but because he verily believes he is aggrieved by the decision and decree of this court in this cause, and thereupon the complainant tenders Lewis B. Fort, Charles C. Allen and John Dickson as his executors, who were approved by the court, and thereupon the said William Wynn as principal, and the said Lewis B. Fort, Charles C. Allen and John Dickson as securities, acknowledge themselves here in open court, jointly and severally, to owe and be indebted to the said Josiah Garland in the just and full sum of twenty thousand dollars ($20,000) good and lawful money of the United States, to be levied of their respective goods and chattels, lands and tenements to be void, upon the condition that you the said William will prosecute your appeal herein, with due diligence to a decision in the Supreme Court, and that if the judgment herein appealed from shall be affirmed, or if your appeal shall be dismissed, you will pay whatever of debt, damages and costs have been recovered against you by the decree of the Circuit Court here, together with the interest that shall accrue thereon, or that you will otherwise perform the decree of the Circuit Court here, and that you will pay the costs and damages that may be adjudged against you in the Supreme Court upon your appeal herein.

Whereupon it is ordered and adjudged by the Court here, that said prayer of appeal be granted, and said appeal be allowed and the Clerk of this Court do make, certify, and send into the Supreme Court, a complete transcript of the record and proceedings in this cause, duly certified, on or before the first day of its next term.

Protest of complainant, against the decision of the land officers of Washington, Arkansas, appear in words and figures following:

"STATE OF ARKANSAS, *County of Lafayette.*

To Thomas H. Blake, Commissioner of the General Land Office, at Washington City:

Be it remembered, that I William Wynn, of the County of Lafayette, and State of Arkansas, do by this my protest, make manifest unto you, as Commissioner of the General Land Office for the

four, and of the independence of the United States, the Sixty-eighth.

By the President,

J. TYLER.

Recorded volume 9, page 247.

J. R. WILLIAMSON,
Recorder of the General Land Office.

Filed 5th October, 1846.

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WILLIAM WYNN, Complainant,
vs.
JOSIAH GARLAND, Defendant. } In Chancery.

And the said William Wynn comes and prays the Court here to grant him an appeal in this case to the Honourable the Supreme Court of the State of Arkansas, upon the affidavit which follows:

PIKE & CUMMINS,
Solicitors for Wm. Wynn.

Lafayette, S. Ct.

IN THE LAFAYETTE CIRCUIT COURT,

At Spring Term, A. D. 1852.

WILLIAM WYNN, Complainant,
vs.
JOSIAH GARLAND, Defendant.

I, William Wynn, do solemnly swear, that the appeal which I pray for in the above entitled case, is not made for vexation or delay, but because I do verily believe that I am aggrieved by the decision and decree of the Circuit Court of Lafayette County, Arkansas, in that case rendered, so help me God.

WILLIAM WYNN.

Sworn to and subscribed in open court, in the Lafayette Circuit Court in Chancery, this 7th day of May, A. D., 1852.

A. BYRNE,
Clerk.

Filed May the 7th, 1852.

A. BYRNE,
Clerk.

Wherepon the following order is entered of record on the 7th day of May, 1852, granting the prayer of said motion, which appears in words and figures following, to wit:

WILLIAM WYNN, Complainant,
vs.
JOSIAH GARLAND, Defendant.

This day comes the said William Wynn, and files his motion and prayer for appeal from the decree in this cause, to the Supreme Court of the State of Arkansas, and files therewith his affidavit that the appeal so prayed for is not made for vexation or delay, but because he verily believes he is aggrieved by the decision and decree of this court in this cause, and thereupon the complainant tenders Lewis B. Fort, Charles C. Allen and John Dickson as his executors, who were approved by the court, and thereupon the said William Wynn as principal, and the said Lewis B. Fort, Charles C. Allen and John Dickson as securities, acknowledge themselves here in open court, jointly and severally, to owe and be indebted to the said Josiah Garland in the just and full sum of twenty thousand dollars ($20,000) good and lawful money of the United States, to be levied of their respective goods and chattels, lands and tenements to be void, upon the condition that you the said William will prosecute your appeal herein, with due diligence to a decision in the Supreme Court, and that if the judgment herein appealed from shall be affirmed, or if your appeal shall be dismissed, you will pay whatever of debt, damages and costs have been recovered against you by the decree of the Circuit Court here, together with the interest that shall accrue thereon, or that you will otherwise perform the decree of the Circuit Court here, and that you will pay the costs and damages that may be adjudged against you in the Supreme Court upon your appeal herein.

Whereupon it is ordered and adjudged by the Court here, that said prayer of appeal be granted, and said appeal be allowed and the Clerk of this Court do make, certify, and send into the Supreme Court, a complete transcript of the record and proceedings in this cause, duly certified, on or before the first day of its next term.

Protest of complainant, against the decision of the land officers of Washington, Arkansas, appear in words and figures following:

"STATE OF ARKANSAS, *County of Lafayette.*

To Thomas H. Blake, Commissioner of the General Land Office, at Washington City:

Be it remembered, that I William Wynn, of the County of Lafayette, and State of Arkansas, do by this my protest, make manifest unto you, as Commissioner of the General Land Office for the

United States, that I am a settler on a part of the public lands of the United States, on a certain portion thereof known and designated as Fisher's Praire, on the South side of the Red River in the County of Lafayette.

That in the year A. D. 1836, I purchased of Joseph Jones, who purchased of Massach Jeans, in 1833, who settled upon and improved the following land in 1829, and there resided until 1833, (to wit,) an improvement on the N. E. ¼ of section 18, Township 16, South of range 25 West, on which land I have been residing since 1836, around and adjoining which lands I have had, and have at this time, near one thousand acres in cultivation. In the month of November, 1842, I produced testimony before the Receiver and Register in the Land Office, at Washington, Arkansas, with Jesse Tealock and Jason C. Wilson, as witnesses; and the said Register and Receiver being satisfied of my right, granted to me the proper credentials of my pre-emption titles to said lands.

Samuel Hemphill, a person whose residence is now unknown to me, in the year 1829, settled upon and made an improvement on a certain tract of land adjoining the above mentioned numbered land and made an improvement upon the N. E. ¼ of section 18, Township 16, South of range twenty-five West, by cultivating a small portion thereof, and at the same time residing on the above specified land, adjoining land, neither has the said Hemphill ever made his residence upon the said North-east quarter upon which I now reside, and upon which all my houses stand, including dwelling house, negro houses, gin houses, barns and stables, nor has he ever been upon said land, since the survey by the General Government, yet a person known by the name of Josiah Garland, a resident of the N. W. ¼ of section 17, Township 14, South of range 25 West, claims to have purchased of the said Samuel Hemphill, the aforesaid N. E. ¼ of section 18, Township 16, South range twenty-five West, being that before alluded to, as the place of my residence.

The said Garland, with Morgan Cryer and Jacob Waggoner, as his witnesses, appeared on the 18th day of February, at the Land Office, at Washington, Arkansas, before the Receiver and Register thereof, the officers of said Land Offices being satisfied from the testimony submitted by the applicant that he was entitled to a pre-emption on the said N. E. ¼ of section 18, Township 16, South of range 25 West, granted to him the proper certificate of right and title.

You will therefore perceive from the facts as set forth in this my protest, that the said Hemphill, of whom the said Garland claims, was not entitled to the benefit of the Act of 1829, inasmuch as the residence and principal improvements was on the N. W. ¼ of section 17, Township 16 South, Range 25 West, and Massach Jeans at the same time living on the aforesaid N. E. ¼ of section 18, Township 16, South, Range 25 West, and at no time did he reside on this last specified land, and that the only testimony upon which he, Garland,

relied, to secure his right of pre-emption on said land, as purchased from said Hemphill, was that a small portion thereof was cultivated in 1829, by Hemphill, and does not state that he ever resided thereon, which is the principal requisition of the act under which he proved up for Garland.

Furthermore, that I am entitled to the aforesaid land by purchase from Joseph Jones, who purchased from Massach Jeans, whose right to a pre-emption was superior to that of Hemphill, being a resident thereon, all of which will more fully appear, a copy of that testimony being hereunto annexed.

Wherefore and inasmuch as the right of the said Josiah Garland to the aforesaid land, and the proof to substantiate the same, are insufficient, I do solemnly protest against a patent being issued, securing the title to said land in Garland, until a re-investigation of the matter may be had, and he should then be entitled to such patent, and ask that you will transmit to the proper person such papers as may be by you supposed necessary to ensure common justice and equity to either and both of the parties claiming.

All of which is respectfully submitted.

WILLIAM W. WYNN.

STATE OF ARKANSAS, *Lafayette County*,
April 24th, 1843.

Dear Sir:

In a few days after the land sales at the Land Office at Washington, in the County of Hempstead in the State of Arkansas, which commenced on the 20th day of February last, I enclosed to you at the City of Washington, a protest against the illegal claims set up by Josiah Garland, Samuel Hemphill and Alexander Hemphill, to pre-emption claims which they are endeavoring to secure to themselves which clearly belong to myself; I will state all three claims as plain as I can in my feeble way. I will in the first place give you the facts in relation to the claim sought to be established by Samuel Hemphill, who settled and made an improvement on a portion of the public land subject to sale by the United States of America, situate on the South side of Red River in the County of Lafayette in the State of Arkansas on or before the year 1829; that he occupied the same under continuous state of cultivation until the Spring of 1834, at which time he sold the said improvement to one Josiah Garland, and by recent survey of the public lands made by the United States of America, and now on file in the Surveyor General's Office at little Rock in the State of Arkansas; the said improvement is ascertained to be upon the N. W. quarter of section 17, Township 16 South, Range 25 West, that a small portion of the lands cultivated extended upon the N. E. ¼ of section 18 in Township 16 South, Range 25 West, on which one Massach H. Jones had

settled and improved by erecting a dwelling house, together with several valuable out-houses, that he was residing thereupon at the time that Hemphill made his settlement, and had for several years before, that he had under cultivation about 50 acres of the said N. E. ¼ of section 18 adjoining to that on which Hemphill resided, that he continued to reside thereupon until the 25th of February, 1833, at which time he sold the said improvement to one Joseph Jones; that on the 24th day of December, 1835, I purchased the same of said Jones, for which claim including forty-two slaves, stock, &c., I gave $60,000; I have occupied the same ever since, and have continued to cultivate and improve the same;—that I have erected thereon a large cotton gin, grist mill, dwelling house, and about forty hewed log cabins;—that on or about the 29th day of November last, I filed in the land office, where said lands were subject to be sold, my affidavit, and sustained the same by two witnesses, and obtained a certificate of purchase from D. P. Witter, Receiver, thereof, it being for the purchase of the N. E. ¼ of Section 18, Township 16 S., Range 25 West.

Josiah Garland it appears, also filed his affidavit, at the Land Office, on the 17th day ot January last, and sustained the same by two other witnesses, and obtained certificate of purchase in like manner to the N. W. quarter of section seventeen, it being the same on which Samuel Hemphill resided, and on the seventeenth day of February, the day before the public sales commenced at said Land Office, Josiah Garland filed the affidavit of Samuel Hemphill in the said Land Office which affidavit sets forth, that he, Samuel Hemphill, supposed from a map then before him, that he cultivated some ten or fifteen acres of the N. E. quarter of section eighteen, whilst he resided upon the N. W. quarter of section 17, Township 16 South, Range 25 West, and the affidavits being sustained by two other witnnsses, the said Garland was granted also a certificate of purchase to the N. E. quarter of section eighteen, although Massach H. Jones had settled on and improved the same before Samuel Hemphill commenced his settlement on the N. W. quarter of section Seventeen, Township 16 South, range twenty-five West, therefore was the oldest settler whose claim I have a regular transfer in addition to my own: Josiah Garland has occupied the settlement he purchased of Samuel Hemphill in 1834, by cultivation with a portion of his slaves under the charge of a manager, whilst he, himself and family, together with the remainder of his slaves, have resided in West Tennessee, until about the 26th of November last. He then came here and built an additional house on the said settlement, that he purchased of Samuel Hemphill, where both himself and family resided. But on or about the 8th day of January last he removed a little cabin out of his yard and placed it where the four sections quarter, to wit: sections 18, 19, 20, and 17 the one on which he resides. He chincked the logs with cotton, and as I learn from Fountain Morris one of his witnesses, he would take his

white family there for three days to enable him to prove that they resided there—to prove up a pre-emption in my field, taking the E. ½ of the S. E. ¼ of section 18, and the E. ½ of the N. E. ¼ of section 19, thereby evading or endeavoring to evade the oath prescribed by Congress, and obviously to me, all the injury that he can, by wishing to split my farm in the centre: now I am astonished that such fraud should be attempted. 'Tis well known that Garland has never resided on any other settlement save the one purchased of S. Hemphill, and that he still resides there, for his family could not have lodged in his little log cabin without lying one upon another. This witness states, that Garland said he only wanted to exchange. Since I forwarded to you a protest against such proceedings, I have learned that Andrew Hemphill has also obtained certificate of purchase from the Land Office where the same was subject to be sold, to the west fractional part of the N. E. fractional quarter of section twenty, Township 16 S. Range 25 West, containing 51.14 acres, the said Andrew Hemphill is a brother to S. Hemphill, and did once occupy the said fraction, but abandoned that fraction and settled on the South-east quarter of Section Seven adjoining section eighteen; that in the year 1836, said Hemphill sold his interest in the prairie, supposed to contain 300 acres and 2000 Cane lands to Col. Samuel P. Carson, formerly a member of Congress from the State of North Carolina, for $3,500. The said transfer is on record in the Clerk's Office of the County of Lafayette. Col. Carson has since departed this life, and his executor was directed by counsel to sell his settlement, as it was considered personal estate and subject to his debts.

I have become the purchaser under public sale. Hemphill was there and purchased some of Carson's slaves to collect his $3,500, and stated that he would do all he could to establish a pre-emption to those who might be entitled. He now has made a transfer of the fraction containing 51.14 acres to Josiah Garland, because he alleges that he never sold it. Now it does seem strange he never said anything about this until lately, and I have cultivated thereon, and have a cotton warehouse and dwelling house, kitchen and corn cribs, situate thereon, and shipping landing on the river. I do hope sir, that you will place this matter all right. I am near sixty years of age, and 'tis hard to be annoyed in this way. Permit me to enquire, as you are the proper authority, how is it that Josiah Garland has lately removed to this State, that he is able to hold so many pre-emptions. On the 19th January he proved up in his own name, one for 1838 and 1840, and one for 1841, and as I am informed, one for 1830. I have resided here all the while and never thought that I was entitled to but two. Your official attention to the above will be duly appreciated by your most obedient servant.

WILLIAM WYNN.

To Thomas H. Blake, Esqr.
Commissioner of General Land Office, Washington City, D. C.
[Rec. clxxix. D. T. 1855.]—9.

P. S. The proof in the case of Keziah Taylor, will be forwarded you as soon as A. P. Bails returns from a visit to his connections, some 200 miles distant. All I ask is justice. I have no doubt but for the party combined, that Mrs. Taylor would never thought of setting up a claim to the N. W. ¼ of section 18, (spelled,) for she was the widow of William Hemphill, when she left the United States, brother to Samuel and Andrew Hemphill and Morgan Cryer, who purchased the improvement from A. P. Bales, is the brother to Keziah Taylor, who sold to A. Hemphill. Notice the chain of circumstances, see how connected to swindle me.

STATE OF ARKANSAS, *County of Hempstead.*

UNITED STATES OF AMERICA.

Be it remembered, that on this, the twenty-ninth day of November, 1842, William Wynn, of the County of Lafayette, in the State aforesaid, personally appeared before me, the undersigned Receiver of Public Moneys, and on his oath depose and say, that he is the head of a family, and over the age of twenty-one years, that he settled on a portion of the public lands of the United States, to wit: on the N. E. ¼ of sec. 18, in Township 16, South of range 25 West, in the district of land subject to sale at Washington, Arkansas, in the month of January, 1836, that he erected thereon a dwelling house and divers other out-houses and buildings, that he had under fence and in cultivation, on said quarter section, in the year 1836, some fifty acres or upwards, and that he has continued to cultivate said land up to present time.

That he was an actual settler and house-keeper on said quarter section, and in possession by his personal residence thereon, on the 22d of June, 1838, and for the 4 months next preceding that date, and further says not.

WILLIAM WYNN.

Sworn to before me, the 29th November, 1842.

D. T. WITTER,
Receiver Pub. Moneys, Washington.

And at the same time and place, and before me, as aforesaid, personally appeared Jason C. Wilson and Jesse Tealock, and after being duly sworn, depose and say, they are personally well acquainted with Col. Wm. Wynn, who subscribed the foregoing deposition, that they know that he is the head of a family, as therein stated, and that all the material matters and things by him therein

stated and set forth are true in substance and in fact, and further they say not.

J. C. WILSON,
his
JESSE ⋈ TEALOCK.
mark.
D. T. WITTER,
Receiver Pub. Mon. Washington, Arkansas.

LAND OFFICE, WASHINGTON, ARKANSAS, 29*th November*, 1842.

We the undersigned Register and Receiver of the Land Office aforesaid, certify that we are well acquainted with Jason C. Wilson and Jesse Tealock, who subscribed the within affidavit, and that they are worthy citizens and their oath is entitled to full credit.

SAMUEL C. WHEAT,
Register.
D. T. WITTER,
Receiver.

The foregoing has the following endorsement on it, No. 4607. William Wynn pre-emption proof examined and allowed this 29th November, 1842.

SAMUEL C. WHEAT,
Register.
D. T. WITTER.
Receiver.

This day personally appeared before me the undersignened, Receiver of the Land Office at Washington, Arkansas, William Wynn, and on his oath, deposeth and sayeth that he entered on the North-east quarter of section 18, in Township 16, South of range 25 West, South of Red River, in his own right and exclusively for his own use and benefit, that he has not directly or indirectly, made any agreement or contract whatever, in any way or manner, with any person or persons, by which the title he might acquire from the Government of the United States, should enure to the benefit or use of any person except himself, or to convey or transfer the said land or the title which he may acquire to the same, to any person or persons whatever, at any subsequent time.

WILLIAM WYNN.

Sworn to before me, this 29th day of November, 1842.

D. T. WITTER.
Receiver.

STATE OF ARKANSAS, *County of Sevier,*

UNITED STATES OF AMERICA.

Be it remembered, that on this the sixteenth day of February, in the year of our Lord, 1833, Samuel Hemphill, late of the County of Lafayette, in the State aforesaid, personally appeared before me the undersigned, an acting justice of the peace, within and for the said County of Sevier, under his oath depose and says, that in the year 1829, he cultivated about fifteen or twenty acres, which he believes according to the map herewith annexed to be on the North-east quarter of section eighteen, in Township sixteen, South of range 25 West, South of Red River, in the district of land subject to sale at Washington, Arkansas, and that he had possession thereof on the 29th day of May, in the year 1830, and further he says not.

S. HEMPHILL.

Sworn to before me, on day and year first above written.

R. V. R. GREEN,
J. P.

Morgan Cryer and Jacob Waggoner are respectable citizens of Lafayette County, and entitled to credit.

D. T. WITTER,
Receiver.

SAML. C. WHEAT,
Register.

STATE OF ARKANSAS, *County of Hempstead.*

This 18th day of February, in the year 1843, Morgan Cryer and Jacob Waggoner, personally appeared before me, Receiver of public moneys at Washington, Arkansas, and on their oaths do depose and say that they know the within named Samuel Hemphill, and that they know the land he cultivated in the year 1829, and had in his possession on the 29th May, 1830, as herein stated, was on the North-east quarter of section eighteen, and that he did cultivate as therein stated, and that he had possession as therein set forth, and

that all the material matters and things by him therein set forth are true in substance and fact, and further say not.

M. CRYER,
his
JACOB ⋈ WAGGONER.
mark.

Sworn to before me, the 18th February, 1843.

D. T. WITTER,
Receiver.

(The foregoing has the following endorsement on it.)

No. 4676.

Samuel Hemphill, pre-emption proof, examined and allowed this 19th February, 1843.

SAML. C. WHEAT,
Register.
D. T. WITTER,
Receiver.

(*For plat see original page* 105.)

GENERAL LAND OFFICE, *January 9th*, 1844.

Gentlemen:

The testimony filed with the conflicting claims of William Wynn, per certif. 4607, and of Samuel Hemphill, per certificate 4671, each for the N. E. ¼ 18, Township 16 S. R. 25 West, and that filed with the conflicting claims of Josiah Garland, per certif. 4631, and of Massach H. Janes, per certif. 4673, the former for the E. ½, S. E. ¼ 18, and E. ½, N. E. ¼ 19, T. 16 S., R. 25 W., and the latter for the whole of the South-east quarter 18, T. 16, R. 25 West, has been examined. Your allowance of the entries 4671, and 4673, has been approved, and the certificates have been placed on file for patenting. The claims upon which they are founded are fully proven and being under the laws of 29th May, 1830, must take precedence of entries 4607 and 4631, founded on the subsequent laws of 1838 and 1841. Certificates 4607 and 4631 have been cancelled. The latter embraced the E. ½, N. E. ¼ 19, not interfered with by entry 4673, but as the claimant, Josiah Garland, was at the time of entry the owner of 320 acres of land in Arkansas, he had no right of pre-emption under the law of 1841, and therefore, entry 4631, is void, irrespective of the interference therewith in part by the prior claim of Massach H. Janes.

Upon application under act of the 12th of January, 1825, the parties entitled to the purchase money, or entries 4607 and 4631, can have the same refunded to them by Treasury warrants.

Respectfully your Obt. Servt.

THOMAS H. BLAKE,
Comm'r.

REGISTER AND RECEIVER, WASHINGTON, ARKANSAS.

GENERAL LAND OFFICE, *January 6th*, 1847.

I, James H. Piper, acting Commissioner of the General Land Office, do hereby certify that the foregoing 13 pages, and that part of the 14th page, immediately preceding this certificate are truly copied from the files and records of this office.

In testimony I have hereunto set my name, and caused the seal of said office to be hereunto affixed, the day and date last before written. [SEAL.]

JAMES H. PIPER,
Acting Comm'r.

Filed May 4th, A. D. 1852.

A. BYRNE,
Clerk.

This document was read on the hearing of the case of Wynn *vs.* Garland, in Chancery.

SHELTON WATSON,
Judge.

WASHINGTON, *Hempstead County*,

ARKANSAS, *March 3d*, 1843.

Dear Sir.

I much regret that I am again called upon to solicit your kind interposition in relation to conflicting claims presumed to be set up to a portion of the public lands situate in the County of Lafayette in the State of Arkansas, on the S. West side Red River. The facts are simply these. In or on the 25th day of February, 1833, one Joseph Jones did purchase of one Massach H. Janes, his improvement, situate on the public lands in Fisher's Prairie, on the South-west bank of Red River, that the said Janes had resided thereon since the year 1828, that Jones settled thereon about 25 working hands and made extensive improvements thereupon; that

in the month of January, 1836, the said Jones sold his improvement to me, including 42 slaves for the sum of $60,000, and I still reside upon the same, and have entered the said improvements, having under cultivation about a thousand acres of land, and about 40 houses; that in the month of February, 1834, 12 months thereafter, one Josiah Garland come to the country and purchased of one Samuel Hemphill, his improvement situated in said Prairie, and adjoining that purchased by Joseph Jones of Janes, that by a recent survey of the public lands situate on the West side of Red River, the plat thereof is now on file in the Surveyor General's Office, at Little Rock, Arks. It appears that Massach H. Janes had erected a dwelling house, stable, and several out houses upon the N. E. ¼ of section 18, T. 16, R. 25 W., that he resided thereon and cultivated a portion of this entire section, until he sold to Joseph Jones, under whom I claim, and that Samuel Hemphill erected a dwelling house upon the N. W. ¼ of sec. 17, T. 16, R. 25 W., and therefore neither was entitled to interfere with the claim of the other, though Jones was the oldest settler. But a few days, to wit: on the 18th day of February last, only two days before the land sale at Washington, in the district where the said lands were subject to sale, the said Josiah Garland filed the affidavit of the said Samuel Hemphill, dated Lafayette County, Arkansas, and sworn to in the County of Sevier, and by further proof that the said Hemphill did cultivate a portion a few acres of the ¼ section of 18, on which Massach H. Jones had ever resided, and had the same in cultivation under the facts Garland was allowed to prove up a pre-emption over Jones, and to prove up in his own name, where Hemphill resided when he made the purchase. Now if Garland has that right have I not an equal right to hold under my purchase from Jones who purchased under Janes. Said Garland now resides on the place that he purchased of Hemphill. But further, to annoy me in my absence from home, to wit: on the 8th or 10th day of January, 1843, a few days before the land sales at Washington, he removes a little house and placed it on the corner of section 17, 18, 19 and 20, T. 16, R. 25 West, and stopped the cracks with cotton, and made oath before the Register and Receiver at the Land Office at Washington, that it was his family residence both for himself and family, and that he had not abandoned his home for the purpose of settling upon the public lands, and he was allowed to prove up a a pre-emption right on the E. ½ of the S. E. ¼ of section 18, T. 16, R. 25 Wt., and the E. ½ of the N. E. ¼ of section 19, T. 16, range 25 Wt., at the same time knowing that there were older claims than his, if any he could have by such improvements. The two quarter sections which are last mentioned, have been under cultivation, one half of each for ten years or more you will recollect that Congress, at the session of 1841 and 1842, granted to me a pre-emption right to said lands, which are particularly described in said act, which you can refer to, allowing me two years from the passage thereof to

enter the same, which will close the 5th August, 1844, but there is a mistake in the range, it was range 26, when it should have been range 25 Wt., all the sections and fractional sections are correctly described, and the Township also, there was one fraction in range 26, but was not included in the act, or that it should have been expressed 25 and 26. Then tell me if the word 26 instead of 25 destroys the claim, when all other descriptions of the lands are strictly true. Please send back those cases of Garland, and give all parties a fair chance as you will do I have no doubt, as you see there is some foul play.

I am your most obt. servant,
WILLIAM WYNN.

To THOMAS H. BLAKE, ESQR.
Commissioner of the General Land Office, Washington, D. C.

STATE OF ARKANSAS, *Lafayette County,*

South Bank of Red River, *March* 11, 1843.

Dear Sir:

I have received your answer in relation to the claim of one Keziah Taylor, to the N. W. ¼ of section 18, T. 16 South R. 25 West, since which, I have again been forced to ask of you to send back the claim set up by one Samuel Hemphill, to the N. E. ¼ of sec. 18, T. 16 S., R. 25 West. Also the claim set up by one Josiah Garland, to the E. ½ of the S. E. ¼ of section 18, T. 16 S. 25 West, and the E. ½ of the N. E. ¼ of sec. 19, T. 16 S., R. 25 W., in order that justice may be done unto those that justice is due to. I have, during the land sales at Washington, Arkansas, which are just closed sent on to your office at the City of Washington, D. C., a protest against each of the above claims. I ask this at your hands because I believe those claims are fraudulent in the extreme. I am very sorry to give you this trouble, but my situation is truly distressing. I have no wish to set up a claim to lands that I am not entitled to, and I am bound to use all fair means to secure that which is justly mine. I removed from Virginia to this State, in 1835, and purchased the estate of one Joseph Jones, situated in this Prairie, consisting of 42 slaves and from 12 to 1400 acres of prairie lands then represented to be within the Province of Texas, for which I paid $60,000. It has since been ascertained by a recent survey now on file in the Surveyor General's Office, at Little Rock, to be within the Territory of the United States, and a pre-emption right was granted to me by the Congress of the United States of America, approved on the 11th day of August, 1842, allowing me to enter the lands designated in said Act, at the price of $1 25 per acre, at the Land Office, where said lands were subject to be sold, allowing to me, two years from the passage of said Act to enter said lands, but a portion of said lands are situated, as will be seen by reference

to the maps now on file in the Land Office, in Township 15 S., Range 25 West, and Township 16 South Range 25 West, but in said, it is by mistake inserted in these words, T. 16 S. of R. 26, instead of 25 West. But the sections and fractional sections designated in said Act, are all correctly numbered, and are the lands on which I reside and claim under purchase, and on which I have expended more than $10,000 in improving. It is proper to inform you that before this Act of Congress reached me, that I had consented that Charles E. Moore, one of the locating agents duly appointed by the Governor of the State of Arkansas, to select a portion of the 500,000 acres, donated by the Congress of the United States, for internal improvements, should locate my lands in my name, at such price as the Legislature might fix thereon. The lands were returned as being located for my benefit at such price, which has been fixed at $2 00 per acre. I have applied for the same and I have been refused to be permitted to purchase more than 320. I have drawn up a protest against said locations, and I have enclosed a copy to your office, and if the Act of Congress granted for my relief, is not impaired by the one word, which is by mistake spelt and inserted range 26, when it ought to have been range 25 Wt. If it should be that I could enter the lands at $1 25 per acre, under said Act of Congress. I would prefer doing so as the State has misled me by holding out inducements, and then refuses to let me become the purchaser of the same. I have been advised by several who are well versed in land matters, to submit those facts for your consideration, and to ask that said floats be overruled, as they have taken most of my improvements. Your advice will be thankfully received. All improvements made upon the lands designated in said Act since the passage thereof, and not selected by the State of Arkansas, previous thereto, are I presume now subject to be entered by me at $1 25, as several improvements have been made since. Having unfortunately made this purchase, I have been forced to seek the best terms that I could. I have been truly sorry that I ever consented to let the State float my lands, as Congress has granted me the relief which was intended by said Act. I would thank you to be placed right in relation to my claim.

With much esteem I am your Ob't. Serv't.,

WILLIAM W. WYNN.

P. S. My claims are the largest in the County of Lafayette, and although I have purchased them at a high price from old settlers, I have much difficulty to prevent others from trespassing upon my legal and equitable claims. My claims embrace eleven settlements, and if those who first made these settlements now resided on them, there would be no difficulty, though I have paid $50,000 for those claims, it does not look as if I ought to have more than my neighbors, thus the disposition is manifested to intrude upon me. And

it gives me all that I can do to save that which is the most valuable, and there is no disposition to interfere with that portion of but little value. All, I respectfully submit to your consideration.

W. W.

STATE OF ARKANSAS, *County of Pulaski.*

To his Excellency, Archibald Yell, Governor of the State of Arkansas.

Be it remembered, that I, William Wynn, a citizen of the County of Lafayette, in the State of Arkansas, do by this my protest, make manifest unto your excellency, that on the 27th and 28th days of April, and the 16th day of May, A. D. 1842, that Charles E. Moore, one of your locating agents, selected the several hereinafter mentioned tracts of land as part of the 500,000 acres granted to the State of Arkansas by act of Congress, approved September 4th, 1842, and reported the same to your excellency as claimed by me, which selection was so made upon the agreement and understanding entered into between said locating agent on behalf of your excellency and myself, that I should be allowed the privilege of purchasing the same at such price, and upon such terms as the Legislature of said State might prescribe for the sale of the lands selected under the act aforesaid, to wit: All of frl. Sec. 34, T. 16 S. R. 25 W. All of frl. Sec. 27, T. 16 S. R. 25 W. All of fracl. Section 29 T. 16 S. R. 25 W. N. ½ of Sec. 28, T. 16 S. R. 25 W. The S. E. ¼ of sec. 28, T. 16 S., R. 25 W., N. E. ¼ of sec. 30, T. 16 S., R. 25 W. All of frl. sec. 21, T. 16 S., R. 25 W. All of frl. sec. 20, T. 16 S., R. 25 W. All of frl. sec. 10, T. 16 S., R. 25 W. All of frl. sec, 9, T. 16 S., R. 25 W. All of frl. sec. 3, T. 16 S., R. 25 W. All of frl. sec. 4, T. 16 S., R. 25 W. All of frl. sec. 8, T. 16 S., R. 25 W., S. ½ of sec. 7, T. 16 S., R. 25 W. All of frl. sec. 14, T. 16 S., R. 25 West. All of frl. sec. 15, T. 16 S., R. 25 W., N. E. frl. quarter 22, T. 16 S., R. 25 W. All of frl. sec. 23, T. 16 S., R. 25 W. All of frl. 26, T. 16 S., R. 25 W. N. W. ¼ of sec. 30, T. 16 S., R. 25 W., S. W. ¼ of sec. 19, T. 16 S., R. 25 W., N. W. ¼ of sec. 19, T. 16 S., R. 25 W., W. ½ of sec. 18, T. 16 S. of R. 25 W., E. ½ of S. E. ¼ of sec. 12, T. 16 S., R. 26 W., E. ½ of N. E. ¼ of sec. 13, T. 16 S., R. 26 W., E. ½ of S. E. ¼ of sec. 13, T. 16 S., R. 25 W., E. ½ of N. E. ¼ of sec. 24, T. 16 S., R. 24 W., E. frl. ½ of sec. 20, T. 15 S., R. 25 W., S. E. frl. ¼ sec. 17, T. 15 S., R. 25 W., S. W. frl. ¼ sec. 17, T. 15 S., R. 25 W. All of frl. sec. 19, T. 15 S., R. 25 W. All of frl. sec. 30, T. 15 S., R. 25 West.

Wherefore and inasmuch as the General Assembly have by an act approved on the 31st day of December, A. D. 1842, authorized the sale of the lands selected by your excellency under that grant upon certain conditions therein prescribed, at the rate of $2 00 per

acre, restricting the quantity to any individual to 320 acres, thereby withholding and depriving me of the right of purchasing more than that quantity, thereby taking from me without any consideration whatever, a large number of extensive and valuable improvements made upon the various portions of the tracts of land aforesaid, the hard earnings of years, and which cost me more than $50,000, a part of which amount was originally expended for the purchase of improvements and titles at a time when that region of country was believed to be in the province of Texas.

And further, that in consequence of the inducements held out by said selections, and the agreement entered into by your excellency's locating agent as aforesaid, he became satisfied that his rights were fully and amply secured and protected by the States selections, and therefore took none of those precautionary measures which were within his reach, to acquire title to a portion of the said lands under the pre-emption laws of the United States, or by floating claims, which he could and would have done, but for the proffered inducements held out by your excellency's agent under your direction and official sanction, and for the reasons aforesaid, I do most solemnly protest against your excellency disposing of any portion of said land under the act of assembly aforesaid, and granting certificates of purchase therefor. I being in good faith, and common justice, equitably entitled to purchase the land aforesaid, upon terms prescribed in said act, would respectfully ask that you will transmit a copy of this protest to the General Land Office at Washington City, directing that the confirmation of the several tracts of land aforesaid be withheld from the State, as the reactions do not become complete until approved by the land department at Washington City. The preliminary difficulty is therefore clearly within the control of the executive, for the reason that the act making the grant, authorized the selections to be made in such manner as the Legislature shall direct, which authority was fully conferred upon your excellency by the Act of Congress, 1842. All of which is respectfully submitted.

WILLIAM WYNN.

STATE OF ARKANSAS, *Lafayette County, April 24th,* 1843.

Dear Sir:

In a few days after the land sales at the Land Office at Washington, in the county of Hempstead, in the State of Arkansas, which commenced on the 20th day of February last, I enclosed to you, at the city of Washington, a protest against the illegal claims set up by Josiah Garland, Samuel Hemphill, and Alexander Hemphill, to pre-emption claims, which they are endeavoring to secure to themselves, which clearly belong to myself. I will state all three claims as plain as I can in my feeble way. I will in the first place

give you the facts in relation to the claim, sought to be established by Samuel Hemphill, who settled and made an improvement on a portion of the public land, subject to sale by the United States of America, situate on the South side of Red River, in the county of Lafayette, in the State of Arkansas, on, or before the year 1829; that he occupied the same under a continuous state of cultivation, until the spring 1834, at which time he sold the said improvement to Josiah Garland, and by a recent survey of the public lands made by the United States of America, and now on file in the Surveyor General's Office, at Little Rock, Arkansas, as the said improvement is ascertained to be on the N. W. ¼ of Sec. 17, S. 16, S. R. 25 W., that a small portion of the lands cultivated, extended upon the N. W. ¼ of Section 18, in L. 16, S. R. 25 W., on which Massach H. Janes had settled and improved, by erecting a dwelling house, together with several valuable out-houses; that he was residing thereupon at the time that Hemphill made his settlement, and had for several years before, that he had under cultivation, about 60 acres of the said N. E. ¼ of Section 18, adjoining to that on which Hemphill resided, that he continued to reside thereupon until the 25th February, 1833, at which time he sold the said improvement to one Joseph Jones; that on the 24th day of December, 1835, I purchased the same of said Jones, for which claim, including 42 slaves, stock, &c., I gave $60,000. I have occupied the same ever since, and have continued to cultivate and improve the same, that I have erected thereon a large cotton gin, grist mill, dwelling house, and about forty hewed log cabins. That on or about the 29th day of November last, I filed in the land office, where said lands were subject to be sold, my affidavit, and sustained the same by two witnesses, and obtained the certificate of purchase from D. S. Witter, receiver thereof, it being for the purchase of the N. E. ¼ of Sec. 18, T. 16, S. R. 25 West. Josiah Garland it appears also filed his affidavit on the 19th day of January last, and sustained the same by two other witnesses, and obtained a certificate of purchase in like manner, to the North-west quarter of Section seventeen, it being the same on which Samuel Hemphill resided, and on the 19th day of February, the day before the public sales commenced at said land office, Josiah Garland filed the affidavit of Samuel Hemphill in the said land office, which affidavit sets forth that he, Samuel Hemphill, supposed from a map then before him, that he cultivated some 10 or 15 acres of the N. E. ¼ of Section 18, whilst he resided on the N. W. ¼ of Section 17, T. 16, S. R. 25. W., and the affidavit being sustained by two other witnesses, the said Garland was granted also a certificate of purchase to the said N. E. ¼ of Section 18, although Massach H. Janes had settled on, and improved the same, before Samuel Hemphill commenced his settlement on the N. W. ¼ of Sec. 17, T. 16, South R. 25 N., therefore was the oldest settler whose claim I have a regular transfer in addition to my own. Josiah Garland has occupied the set-

tlement he purchased of Samuel Hemphill in 1834, by cultivation with a portion of his slaves, under the charge of a manager, whilst himself and family, together with the remainder of his slaves, have resided in West Tennessee, until about the 26th of November last; he then came here, and built an additional house on the said settlement that he purchased of Samuel Hemphill, where both himself and family reside. But on or about the 8th day of January last, he removes a little cabin out of his yard, and places it where the four Sections corner, to wit: Section 18, 19, 20, and 17, the one on which he resides. He chinked the logs with cotton, and as I learn from Fountain Morris, one of his witnesses, he would take his white family there for three days, to enable him to prove that they resided there, to prove up a pre-emption in my field, taking the E. ½ of the S. E. ¼ of Sec. 18, and the E. ½ of the N. E. ¼ of Section 19, thereby evading or endeavoring to evade the oath prescribed by Congress, and obviously to do me all the injury that he can, by wishing to split my farm in the centre. Now I am astonished that such frauds should be attempted. It is well-known that Garland has never resided on any other settlement, save the one purchased of S. Hemphill, and that he still resides there, for his family could not have lodged in his little log cabin without lying one upon another. This witness states that Garland said that he only wanted to exchange.

Since I forwarded to you a protest against such proceedings, I have learned that Andrew Hemphill has also obtained a certificate of purchase from the Land Office where the same was subject to be sold to W. frl. part of the N. E. frl. ¼ of Sec. 20, T. 16, S. R. 25 W. containing 51. 14 acres. The said Andrew Hemphill is a brother to T. Hemphill, and did once occupy the said fraction, but abandoned that fraction and settled on the S. E. ¼ of Sec. 7 adjoining Sec. 18. That in the year 1836 said Hemphill sold his interest in the prairie supposed to contain 300 acres, and 2000 cane lands to Col. Saml. P. Carson, formerly a member of Congress from the State of N. Carolina, for $3,500. The said transfer is on record in the Clerk's Office of the County of Lafayette. Col. Carson has since departed this life, and his Executor was directed by Counsel to sell his settlement as it was considered personal estate, and subject to his debts. I have become the purchaser under public sale. Hemphill was there and purchased some of Carson's slaves to collect his $3,500, and stated that he would do all he could to establish a pre-emption to those who might be entitled. He now has made a transfer of the fraction containing 51. 14 acres to Josiah Garland because he alleges that he never sold it. Now it does seem strange he never said anything about this until lately, and I have cultivated thereon, and have a cotton ware house and dwelling house, kitchen and corn crib situate thereon, and my shipping landing on the river. I do hope, sir, you will place this matter all right. I am near sixty years of age and

it is hard to be annoyed in this way. Permit me to inquire as you are the proper authority how is it that Josiah Garland has lately removed to this State that he is able to hold so many pre-emptions. On the 19th January last, he moved up in his own name one for 1838, one 1840 and one for 1841 and as I am informed one 1830. I have resided here all the while and never thought I was entitled to but two. Some official attention to the above will be duly appreciated by your most obedient servant,

WILLIAM WYNN.

Thomas H. Blake, Esq., Commissioner of the General Land Office.

P. S. The proof in the case, Kesiah Taylor, will be forwarded you as soon as A. P. Bales returns from a visit to his connections some 200 miles distant. All I ask is justice. I have no doubt but for the parties combined, that Mrs. Taylor would never thought of setting up a claim to the N. W. ¼ of Sec. 18, for she was the widow of William Hemphill when she left the United States, brother to Samuel and Andrew Hemphill, and Morgan Orger, who purchased the improvements from A. P. Bales, is the brother to Keziah Taylor, who sold to A. Hemphill. Notice the chain of circumstances. See how connected to swindle me.

Fisher's Prairie, S. side of Red River, July 31st., 1843.

Dear Sir:

Samuel C. Wheat, Esq., Register of the Land Office, Washington, District Arkansas, has placed in my hands a copy of your letter dated on the 26th of June last, showing to him that the lands reported to your office which appears on the face of list No. 1, selected by the State of Arkansas, had been acted upon, and that the lands claimed by me under a special act of Congress approved 11th August, 1842, which appeared on the face of said list, had been rejected by the Honorable Secretary of the Treasury.

I avail myself of this opportunity to express my warm and sincere thanks to each of you for a share of justice without which I must have been crushed by the unfriendly State of Arkansas. There appears to be in the special act of Congress granted for my relief, one word spelt *rong* in township U. R. 25 West. It is spelt twenty-six. This gave great exultation to the low and ill-meaning portion of those who owe no good to others. I was advised by legal authority to file my protest against the election of the land contained therein by the State of Arkansas as a portion of the 500,000 acres donated to the State by Congress, that by referring to the map and the act the lands granted, were correctly designated by sections and fractional sections, which was conclusive evidence that it was intended for S. 16 R. 25 W. The facts were these:

I had petitioned for four eighty acre tracts, situate in Sec. 12 and Sec. 13, T. 16, R. 26, W., therefore by some means the four eighty acre tracts are not included. The map of that township and range 26 West no doubt produced the error, as it was only a small billet of paper that contained no other portion of said map only to designate the Sec. 12 and 13. And the East portion of each Section containing two eighths adjoining Sections 7 and 18 in T. 16, R. 25, W. Shameful efforts have been made by the cunning and artful depraved portion of the community to filch from my pocket every dollar that could be done by such means. Josiah Garland, who has resided in West Tennessee, near Legrange, on Wolf River, Marshall County, since Spring 1836, soon after the passage of the act of Congress, removed his white family, together with a few slaves, to a settlement which he purchased of one Samuel Hemphill, in the year 1834, on which Garland resided with his entire family until 1836, at which time he removed to Tennessee, where he has remained until November, 1842. During his residence in Tennessee he has continued to cultivate and improve the place on which Samuel Hemphill resided, until sold to said Garland by keeping his slaves thereon, under the direction of an overseer. Since his removal to this State in November, 1842, J. Garland has proved up a pre-emption in his own name on the N. W. ¼ of Sec. 17, S. 16, R. 25 W., on which he now resides ; it being the same he purchased of Hemphill in 1834, whereon J. Hemphill resided and had the larger portion of his farm in cultivation. J. Hemphill is now a resident of Texas and has been ever since he sold to Garland in 1834. Now mark the design. J. Garland was gone all the way to Texas, could not S. Hemphill to come in person, but returns without, gets a map of the survey of the township, and sends his son William Garland who returns with an affidavit of said Hemphill, who states upon oath, that from the maps then before him, that he supposes that he must have cultivated 15 or 20 acres of the N. E. ¼ of Sec. 18 T. 16. R. 25 W. J. Garland gets two witnesses and pays out the pre-emption, and after takes an assignment from said Hemphill who never presumed to set up a claim to the N. E. ¼ of Sec. 18 T. 16 R. 25. W., because one Massach H. Janes was residing thereon at the time said Hemphill began to settle on the N. W. ¼ of Sec. 17, T. 16, S. R. 25, W. Janes was the oldest settler by several years, had erected a valuable dwelling house and all necessary out houses, and cultivated about 50 acres of said N. E. ¼ of Sec. 18 T. 16. R. 25 W. Massach H. Janes sold to Joseph Jones in 1833, and Jones sold to me in 1835. So it will be seen that a continuation of residence together with cultivation and improvement has at all times been kept up. The improvements consist of about fifty good log cabins, hewed, framed mill house, and a large Gin house, all worth $5000. It will be seen that I have proven up and paid out a pre-emption to said N. E. ¼ of Sec. 18, T. 16 S. R. 25 west. J. Garland also has prevailed on

Andrew Hemphill to prove up and buy out a pre-emption on the E. frl. part of the ¼ Sec. 20 T. 16, R. 25 west, and taken an assignment from the said Hemphill. I have no doubt that Hemphill once resided upon said fraction, but he abandoned it, and has been absent before 1835, and I have cultivated a portion in 1836, and have a large cotton ware house, and a dwelling house, kitchen, &c., thereon. The only vestage of Hemphill's settlement that was visible in 1835 was a few young peach trees, the house was rotten and I do not recollect that I saw one other part of it remaining. Congress could never design that such claims should be allowed, and I am sure that they will be rejected. An upright man would always be put to fright otherwise. I have stated the facts as they exist and can prove them. I beg that you will inform me if J. Garland, who resided in Tennessee from 1836 until November, 1842, can be entitled to more than one pre-emption, as he never resided here at the time of the passage of any act of Congress granting the pre-emption to settlers on public lands. He resided upon the N. W. ¼ of Sec. 17, T. 16, R. 25 west, in '34 and '35, and in 1842, he returned to the same, and built him a new cabin, and proved up the same in his own name, which I have no doubt he was entitled, With the experience that I now have of the frontier States, I would advise all eastern gentlemen, with or without families, who may hereafter wish to emigrate, first to think, would you leave this for a world which you have never seen. I am respectfully your obedient servant,

WILLIAM WYNN.

To Thomas H. Blake, Esq., Commissioner of the General Land Office.

LAFAYETTE COURT HOUSE, *August 8th*, 1843.

Sir:

By consent of parties the evidence was this day closed in the case of Keziah Taylor, *vs.* William Wynn as to a claim set up by the said Keziah to the N. W ¼ of Sec. 18, T. 16 S. R. 25 W. A. P. Bales stated that he contracted with Keziah Taylor for said improvement in 1829, complied with his contract as far as the law permitted him to do. Morgan Cryer, the brother of Keziah Taylor, in 6 or 12 months thereafter purchased the same of A. P. Bales and shortly thereafter sold the same to one Andrew Hemphill, thus it appears that Keziah Taylor was considered to have relinquished her claim if any she had to A. P. Bales. I have no doubt but the testimony will enable you to settle this matter agreeable to law and equity. Keziah Taylor had been absent from the United States 12 year before her return in 1842. She is at this time a resident of the Republic of Texas. I beg that you will excuse me for submitting the following facts to you, in which my interest makes it my duty.

In the year 1834 Josiah Garland purchased from Samuel Hemphill his improvement adjoining the one on which I now reside. Since said purchase, by a recent survey made, and now on file in the Surveyor General's Office, Little Rock, Arkansas, it has been ascertained that Samuel Hemphill's improvement is situate on the N. W. ¼ of Sec. 17, T. 16, S. R. 25 W., that his dwelling house and the major part of his farm was thereon, but since said survey it appears, that Hemphill did attatch 15 or 20 acres, on the N. E. ¼ of Sec. 18 T. 16, S. R. 25 W., at which time there was a settlement upon the same, including a dwelling house and all necessary out houses and apple and peach orchard, together with about 50 acres of the same under cultivation, and had been for several years before Hemphill made his settlement on the N. W. ¼ of Sec. 17 T. 16 R. 25 W., these are the facts. Garland resided on the settlement purchased of S. Hemphill two years 1834 and 1835. In 1836 he removed to the State of Tennessee, leaving a portion of his slaves on said settlement, returning himself every winter to receive the crop. He has resided in Tennessee, near Lagrange from 1836 until November, 1842, together with his wife and family. Within about two months after the approval of the special act of Congress, granting to me certain lands therein designated, he removed to this settlement, purchased of Samuel Hemphill, built an additional house thereon, and on the 8th of January, 1843, he built or removed a chicken house from his yard and put it up near the corner stake of Secs. 17, 18, 19 and 20, chinked it with cotton mots, and made oath that house was his residence, both for himself and family, &c. Now sir, please observe the craft of this man, instead of calling upon Samuel Hemphill, to prove up an adjoining quarter by reason of cultivation, he makes proof in his own name to right of pre-emption upon N. W. ¼ of Sec. 17, T. 16, R. 25 W., and files the affidavit of Samuel Hemphill to prove the right of a pre-emption on the N. E. ¼ of Sec. 18 T. 16, R. 25 W., who stated that from the plat then before him that he supposed he cultivated 15 or 20 acres of said N. E. ¼ of Sec. 18 T. 16, R. 25 W., who has never been on said settlement since 1834, better than 8 years, when he well knows that this was the very best settlement in the surrounding country situate on said N. E. ¼ Sec. 18 T. 16 S. R. 25 W., when he, Hemphill, made his settlement. The question arises whether Garland has not forfeited all right of pre-emption whatever to any portion of the public lands situate in Sec. 17, T. 16, R. 25 W., by reason of waiving the right of Samuel Hemphill to prove up upon the N. W. ¼ of 17 Township 16 Range 25, when he, Hemphill, resided and had thereon the major part of his farm when the N. E. ¼ of Sec. 18, T. 16, R. 25 W. was highly improved before he, Hemphill, made his settlement

Also does not the question arise, that by reason of Garland's having made proof to the right of pre-emption upon the N. W. ¼ of Sec. 17, T. 16, R. 25 W., when Samuel Hemphill only was

entitled—forfeit all right to prove up an adjoining ¼ by cultivation. No pre-emption act of Congress passed during the time that Garland resided in Arkansas, in 1838 & 1840 & 1841. He was with his family a resident of Tennessee, and removed here last November, 1842. After a pre-emption right was by the act of Congress approved 11th August, 1842, given me to all the unappropriated lands embraced in said act. It is my duty also to protest against the right of pre-emption proved up by his (Garland's) son William S. Garland, to the S. E. frl. ¼ of Sec. 17, T. 16, R. 25 Wt., containing 88 a 68, having no legal right thereto, he being a resident also of Tennessee, a member of his father's family until Nov. 1842.

I also protest against the claim set by Andrew Hemphill, to a right of pre-emption to the N. E. frl. ¼ Sec. 20, T. 16, R. 25 W., containing 51, 14 acres. Said Hemphill left and abandoned the same about 1833, and was residing in 1835, upon the settlement now claimed by Keziah Taylor, and well knew that I cultivated a portion of said N. E. fraction of Sec. 20, T. 16, R. 25 Wt., in 1836, against which he never complained. I have several houses situated thereon and a cotton ware-house. He, Hemphill, has, as I am informed, transferred his claim to Josiah Garland. I have made this appeal to your office to save trouble, place me right. With pleasure I will abide your decision. I do hope that God will bless both you and the Honorable Secretary of the Treasury, I reverence your names, and will forever. I was lost but now I am found. With a heart full of gratitude, I am respectfully your most obedient servant,

WILLIAM WYNN.

THOS. H. BLAKE, ESQR.,
Commissioner General Land Office.

FISHER'S PRAIRIE, *August 15th*, 1843.

Sir:

I have received a copy of a letter from Thomas H. Blake, Esqr., Commissioner of the General Land Office, Washington City, to Samuel C. Wheat, Esqr., Register for the Land Office, for the Washington District, Arkansas, showing that action has been had upon the lands reported to the General Land Office, as per list No. 1, selected by the State of Arkansas as a portion of the 500,000 acres donated to said State by act of Congress, one portion of the lands in said list No. 1, were claimed by myself under a special act of Congress, approved 11th August, 1842, against that portion of said section I had filed my protest, and being informed that the case has been laid before your Honor, and that said selections were rejected. It may seem strange to your Honor, but strange as it may appear, I should consider that I had committed a great sin, if I were not to tender you my sincere thanks. Sir, my all rested

upon that decision, and I now flatter myself that I shall be enabled to get out of my difficulty by this fortunate act received at your hands. I was fraudulently led into the purchase of those lands, before the boundary line was run between the United States of America, and the Republic of Texas. I have paid upwards of $50,000, and not yet done. I do wish that I could express the gratitude I bear towards you, in such language that you could realize the feeling of a warm and grateful heart.

I emigrated from Virginia to this State in 1835. I am now sixty years of age, and my troubles have been greater since I made the purchase of those lands, than all others, during my life. Every effort appears to be made by the settlers, with a few exceptions, to interfere with my claim. I offer to take what I gave, and give up all claim whatever; but 'tis well-known that the lands would not sell for half cost, yet every impediment is thrown in my way.

Excuse me Sir, a matter of much importance to me, yet lies in my way. Allow me to make out the case, 'tis this, the lands granted to me by the act of Congress, approved 11th August, 1842, are all correctly designated, and numbered by sections, and fractional section, both in township 15 and 16, but by examining the act, a portion is not included, by reason of which, I discover that the range is spelt twenty-six, when it is 25. The error must have happened in this way. There was 320 acres entered in township 16, S. R. 26 West, which is left out. Therefore the lands are situate in range 25 Wt., and had the 320 acres have not been overlooked, would have been situate in range 25 & 26 West. I presume that this error does not invalidate the act, because it is evidently a mistake. I would thank you sir, to advise me upon this matter. Once more, if you please, Josiah Garland came to this State in 1834, about the first day of March, he purchased a settlement of one Samuel Hemphill, adjoining the lands that I now reside upon, he lived upon the same until 1836, with his family. He then removed to West Tennessee, with his wife and children. With a part of his slaves, he has occupied the place by cultivation ever since 1834, but being a resident of another State at the time and passage of the acts of Congress, granting pre-emptions to settles on the public lands since 1836, and never removed back until Nov. 1842, some months after the passage of the act of Congress for my relief. I desire to be informed, whether, under such state of things, could be allowed a pre-emption, upon lands granted me by Congress, when he was at the time of the passage thereof, a resident *a resident* of Tennessee, though he annually came to receive the crop when finished. Garland has also proved up a pre-emption on the ¼ Sec. of land purchased of Samuel Hemphill, in his own name. I am induced to think he has forfeited the same, as he was a resident of Tennessee, when the act of 1838 passed, and was at the time, the act of Congress passed for my relief. My view is this, Garland should have proved up by Hemphill, and then

under the act of 1840, extending the act of 1838, might have proved up an adjoining ¼ by cultivation. Your compliance will much oblige me. The name of John C. Spencer will ever be revered by your most obedient servant.

(Signed) WILLIAM WYNN.

HON. JOHN C. SPENCER.

GENERAL LAND OFFICE, *September 24th*, 1847.

I, Richard M. Young, Commissioner of the General Land Office, do hereby certify that the foregoing nineteen pages are truly copied from the files of this office. The following interlineations having been made before this certificate was attached, viz.: On the first page the word "situate," between the 12th & 13th lines from the bottom, on the 3d page, *on the third page*, the word "I," between the 7 & 8 lines from the bottom, on the 5 page the word "now," between the 1 & 2 lines from the top, and between the 8th & 9th lines of the postscript, on said page the word "the." On the sixth page the words "mentioned" and "of land," above the 1st line at the top and the 7 page the words "right of" "tracts of" "and the," the first between the 14th & 15th lines from the top, the second between the 16 & 17 lines from the top, and the 3d between the 22 & 23 lines from the top. On the 8th page the word "up," between the 11 & 12 lines from the bottom, and the words "day of," between the 12 & 13th lines from the bottom. On the 9th page the word "then," between the 4th & 5th lines from the bottom, and the words "of purchase," between the 9th & 10th lines from the bottom. On the 11th page the words "to the above," between the 9th & 10th lines from the bottom, and the word "his," between the 23d & 24th lines from the bottom. On the 12th page the words "as a portion," between the 6th & 7th lines from the bottom, on the 13th page the word "in," between the 14th & 15th lines from the bottom, on the 14th page the words "and a large gin house," between the 5th & 6th lines from the top, and on the 17th page the abbreviation "Wt.," between the 4th & 5th lines from the top, and the word "as," between the 13th & 14th lines from the top. Many slight verbal corrections have been made, (not deemed material to notice) and erasures of words improperly inserted in making the copy.

In testimony whereof I have hereunto set my hand and caused the seal of the General Land Office to be hereunto affixed, the day and date first above written.

[SEAL.]

RICHARD M. YOUNG,
Commissioner.

This document was read on the hearing of the case of Wynn vs. Garland, in chancery.

SHELTON WATSON,
Judge.

Filed May the 4th, A. D., 1852.

A. BYRNE,
Clerk.

Depositions taken before John Waggoner, a justice of the peace in, and for the county of Lafayette, commencing on the 31st day of August, 1847, in pursuance of a commission issued for that purpose; said depositions and commission appearing, in words and figures following, to wit:

THE STATE OF ARKANSAS, *County of Lafayette.*

IN LAFAYETTE CIRCUIT COURT,
July term A. D. 1847.

WILLIAM WYNN,
vs.
JOSIAH GARLAND. } Injunction.

Came the parties by their respective solicitors, and on motion, and by consent, and agreement of parties, here in open Court expressed, it is ordered that said complainant file his exceptancy as replication to the answer of said defendant herein, at least sixty days before the first day of the next term of this Court, and by like consent and agreement it is further ruled and ordered by the Court, that both of said parties have, and leave is hereby granted unto each of them, to take the depositions of witnesses generally, before any Judge or Justice of this State, or of any State in the United States, or territories thereof, to be read in evidence, either to sustain or dissolve the injunction granted herein, or to be read in evidence upon the final hearing of this cause, in like manner, and with the like effect, as if this cause had been regularly set down for hearing. A true copy from the record.

Attest, JESSE DOUGLASS,
Clerk.

To any Judge or Justice of the Peace of the State of Arkansas or of any State in the United States or Territories thereof, greeting:

WILLIAM WYNN,
vs.
JOSIAH GARLAND. } Injunction.

Know ye, that we reposing confidence in your prudence and fidelity, do by these presents, give you authority diligently to

examine all witnesses whatever that William Wynn may bring before you in a certain suit, now pending in our Circuit Court in and for the County of Lafayette, and on the Chancery side thereof, in which said William Wynn is Complainant and J. Garland is Defendant.

Therefore we desire you that at certain times and places, by you to be appointed for that purpose, you cause the witnesses to come before you, and that you then and there examine them separate and apart upon their corporal oath first taken before you upon the Holy Evangelists; that you reduce their examination to writing, and when you shall so have taken them that you the same, with this communication closed up under your seal to us in our said Circuit Court, at the town of Lewisville, in the County aforesaid without delay.

[SEAL.]

In testimony whereof I have hereunto set my hand as Clerk and affixed the seal of said Court at office, this 30th day of August, in the year of our Lord, one thousand eight hundred and forty seven, and in the seventy second year of American Independence.

JESSE DOUGLASS,
Clerk.

The execution of this commission appears by the schedule hereunto annexed.

JOHN WAGGONER,
J. P.

Deposition of witnesses taken and subscribed before me, John Waggoner, an acting and duly commissioned Justice of the Peace for the County of Lafayette, in the State of Arkansas, on the 31st day of August, A. D. 1847, between the hours of 8 o'clock in the forenoon and six o'clock in the afternoon of said day, at the residence of William W. Wynn, at the cut off on Red River, in the County and State aforesaid, in pursuance of a commission hereto annexed and to be used as evidence in a certain cause now depending in the Circuit Court of the County of Lafayette aforesaid, on the Chancery side thereof, wherein William Wynn is complainant, and Josiah Garland is defendant, on the part of the said complainant.

JOHN WAGGONER,
J. P.

Jacob Waggoner, a witness known to me to be of lawful age, being to me produced at the time and place aforesaid, and being by me first duly sworn to testify the truth, the whole truth and nothing but the truth touching the matters in controversy between the parties aforesaid, did on his oath depose as follows:

Question. What is your age, where do you reside, and how long have you so resided, are you acquainted with the parties to this suit?

Answer. I will be seventy-four years of age in September, the 9th day; I reside in Lafayette County, Arkansas, and have resided in said County about twenty-five years.

JOHN WAGGONER,
J. P.

Question. If you ever gave your affidavit touching the fact that Samuel Hemphill resided on the N. E. ¼ of Sec. 18 in T. 16, in R. 25, south of Red River, and situate in Fisher's Prairie, and that he cultivated the same or any portion thereof in 1829 or 1830, please so state, and if you did give such affidavit, state under what circumstances it was given, whether you are or are not satisfied, you fell into error in that affidavit?

Answer. I have never given any affidavit that I know of for the above quarter section. If I did I did not aim it for that place. I am an unlettered man.

Answer. If I ever gave such affidavit it was under mistake as to the locality of said N. E. ¼ of 18 believing it embraces different portions of said prairie from what I now find by looking at the lines as properly surveyed, and I did not know that I was making for said Hemphill an affidavit that said Hemphill cultivated any portion of said tract of land either in 1829 or 30, or that he resided thereon in either of said years, but I was informed and induced to believe by said Garland and by his representations that the tract of land cultivated by him, Hemphill, in 1829 and 1830, and on which said Hemphill resided, was on the said N. E. ¼ of 18, but find it was the place he cultivated and on which he resided in said years, was on a quarter east of the said North East quarter and that Samuel Hemphill never did reside on or cultivate any portion of said North East quarter of section during the years of 1829 or 1830, or at any other time to my recollection.

Question. Who did you oversee for in the year 1829?

Answer. I overseed in that year for old Mrs. Hemphill, the mother of said Samuel Hemphill, who resided on the quarter of section East of the said North East quarter of section.

Question. Where did you cultivate as overseer in the year 1829?

Answer. On the quarter East of said North East quarter as aforesaid in said Fisher's Prairie and did not cultivate any part of said North East quarter during that year, viz: 1829.

Question. Who paid you for your services in that year?

Answer. I believe Andy Hemphill paid me for my services that year—of that I am certain.

Question. Where did Samuel Hemphill reside in the year 1830?

Answer. He resided here and there, and was sometimes in

Fisher's Prairie as a passenger. I cannot tell where he resided in particular.

Question. Did you ever swear in order to prove up a pre-emption to said N. E. quarter of section of 18, for said Samuel Hemphill that said Samuel resided on the said quarter in the month of May, 1830, if so, who induced you to swear it ?

Answer. I am an unlettered man, and if I ever made such an affidavit, or so swore, I do not know it, for I cannot read. And if I did make it, it was put on me as a trick. I never designed it. Col. Garland induced me to make affidavit as I thought to prove up pre-emption for himself.

Question. Can you say on your knowledge, that said Samuel Hemphill actually resided on the said N. E. quarter of section 18, in May, A. D. 1830 ?

Answer. Said Hemphill did not reside on said N. E. quarter of section 18, in the month of May, A. D., 1830, nor at any other time that I know of.

Question. Were you present when the line between section 17 and 18 aforesaid was run ; if so, state when and by whom, and who was present ?

Answer. I was present when said line was run. It was surveyed and run to-day by James Jett. John Waggoner, Cage Horn, John Field, Col. Wynn, and Andrew Hemphill and Simon S. Higgs were present.

The hour of six having arrived, the further taking of the testimony is adjourned until to-morrow morning at 8 o'clock.

JOHN WAGGONER,
J. P.

Wednesday morning, Sept. 1st, A. D., 1847, the parties aforesaid met at the place in the caption above mentioned at half past 8 o'clock in the day aforesaid, and the witness Jacob Waggoner heing reproduced did further depose and say :

Cross Examined by Defendant :

Before you proved up any pre-emption for the Defendant, Garland, did you go and examine the lines and the corners of the quarter sections in relation to which your testimony was taken and who gave testimony in relation to such pre-emption, and at what time was your testimony taken, and before whom ? Tell all you know relative to the matters.

Answer. I went and examined the lines and corners in relation to the pre-emption and quarter sections in which my testimony taken, and found a corner near the part which was designated to me as the corner by James P. Jett, on yesterday, in the field, at as near the point designated, I went to the same place or near it.

Question. When you went to examine the lines and corners with Garland, the defendant, at the first time, was the field enclosed by Samuel Hemphill by fence then standing ?

Answer. Garland had extended his fence so as to include the field made and enclosed by S. Hemphill.

Do you know anything of conditional lines agreed on between S. Hemphill and Massach H. Janes, or between Garland, the defendant, and complainant Wynn, or those who own the land on which they have resided in Fisher's Prairie?

Answer. There was a conditional line, but I was not acquainted with it. Col. Garland told me it had been altered.

Question. Had there been considerable alterations in the plantations in Fisher's Prairie, since the time you overseed for Mrs. Hemphill in 1829 to the time you went and examined the land lines and corners before your testimony was taken in relation to the pre-emptions?

Certain. There was so much, that I was mistaken in the distance and could tell nothing.

Question. Has there been any alteration as change of fences in improvements in the prairie since the time you first went to examine the lines and corners of the land to that time?

Answer. Yes, the fences have been changed.

Question. What time had elapsed from the time you first went to prove up the pre-emption for Garland to this time?

Answer. I cannot tell, I don't know, I am old and keep no dates and forgetful and cannot tell unless I could have some date to which I could refer to refresh my memory.

Question. Had you not as much means of knowing and judging at the time you first examined the land lines and corners as at this time?

Answer. I had not. As the lines were run now and measured I found a certain place which I knew.

Question. What places were they, and by what means did you find it, and was it pointed out to you by any other person?

Answer. A. Hemphill was walking before me and said here is that mound, I then knew I was near the corner of the fence, Samuel Hemphill's farm, or Mrs. Hemphill's farm, the field on which I overseed for old Mrs. Hemphill.

Question. Was it not generally known that Samuel Hemphill owned the place on which you overseed in 1829 for Mrs. Hemphill, and was it not called his place generally by the family and others, and not Mrs. Hemphill's?

Answer. I cannot say; it was called Mrs. Hemphill's generally.

Question. Was there not several mounds on and about the place on which you overseed for Mrs. Hemphill in 1829?

Answer. There was none such as that in the field which I cultivated, there was others in the swamp.

Question. How much land did you cultivate for the Hemphills in 1829?

Answer. I cannot tell. It was not measured. There was more on the field than we cultivated.

Question. What direction was the mound you mentioned from the corner designated to you on yesterday by James P. Jett in the field?

Answer. It was in a north east direction.

Question. What distance was it?

Answer. I cannot say. It might be one hundred yards. I did not measure it.

Question. Has any other person designated to you the corner in the field besides Col. Garland, the defendant?

Answer. Col. Wynn, the complainant, told me where the line would run, but did not point any corner or stake where it would be or was, but I found when the survey was made it run near where he said it would run.

Question. How far from the house, in which Mrs. Hemphill resided, in 1829, is the mound to which you refer, and in what direction?

Answer. It is nearly west, perhaps a little north west, but a very little; somewhere about fifty rods, a little over or under perhaps.

Quest. Did not defendant and Garland, on Monday this week, designate you the corner in the prairie at which you stopped in running the line on yesterday.

Answer. He did.

Quest. Did he not set the compass and request you to see where east, west, north and south would run through the prairie; and did you examine or look by the compass to see where the line would run, and did you not say that Samuel Hemphill did cultivate some twelve or eighteen acres in 1829, which is now in the N. E. ¼ of section 18 T. 16 S. R. 25 West?

Answer. The defendant Garland did set his compass at the corner or near it, when James P. Jett stopped running on yesterday and I examined the courses through the prairie, and I then thought that some portion of the land cultivated by Samuel Hemphill in 1829, was on the N. E. ¼ of section 18 in Town Sixteen south of range 25 west, say from twelve to eighteen acres, but when the chain came and it was measured, I was deceived, and found the land cultivated by Samuel Hemphill in 1829 was not included in said N. E. ¼ of section 18, T. 16, and I always thought from the time I first examined the lines and corners at the request of the defendant Garland, up to yesterday that a portion of the land cultivated by Samuel Hemphill in 1829 was included on what is now found to be the N. E. ¼ of section 18 town 16, South R. 25 West.

Re-Examined by Complainant.

Quest. At the time you first went to examine the lines referred to by you in your answer to the first of defendant's interrogotaries,

who got you to go, and who pointed out to you the lines and corners, and did you have a compass at that time to trace the lines by? Tell all you recollect about it.

Answer. The defendant Garland got me to go. The corner and lines were pointed out to me by Garland. They looked like section corners and I believe they were, but I could not read the marks that were on them. We did not have a compass to trace the lines by at that time. The corner showed me by Garland was in the woods, and I think it was the same one that was showed me and started from yesterday by J. P. Jett, when he run the line above referred to. When at that corner, I could not see Wynn's or Garland's fields. When Garland and myself started from the corner aforesaid, we went a south direction by the blazes. I think as far as the woods lasted, when we got into the plantation of defendant. He showed me where the line run through by pointing out to me the courses.

Quest. You speak of being at a corner in company with defendant on the 30th of August, 1847, and that he set his compass, and got you to take the course by it. State whose compass that was, whether it was accurate, and whethor you know anything about surveying, and who was present besides yourself and said Garland?

Answer. I think it was Mr. Douglass' compass, Mr. Garland said so. I *know nothing* about the compass whether it was accurate or not, I am no judge. I do not know anything about surveying. I have carried chains and blazed, but I never surveyed. I can tell north and south, east and west by the compass, and can tell the letters when I look at them. We set the compass and ran along near the blazes in the woods and we went into the lane to the half mile corner. A man by the name of Gift and a son of defendant's, were with us at the time.

Quest. When you stated to defendant and Gift, and defendant's son, that you thought Samuel Hemphill had cultivated from 12 to 18 acres of the N. E. ¼ of section 18, in township 16, south of range 25 west, did you do so upon seeing the line run, or did you not believe that Hemphill's fence did stand upon said quarter section in 1829.

Answer. I merely gave it as my opinion then, that Hemphill had cultivated some of the quarter section aforesaid, but when Jett run the line north and south, and set his compass east and west, and after stepping from where Hemphill lived in 1827, I discovered that the section line running north and south between section 18 aforesaid and section 17 was further from where the house stood than I supposed when I examined the lands with Garland. We first run east 40 rods with the chain, we then went to where the house stood, and stepped back to where the 40 rods stopped.

Quest. When you lived with Mrs. Hemphill in 1829, was there a mound west of her house in the field? If so, state whether the fence of the Hemphill's was on or near that mound, and if so, how far

from it, and whether you saw that mound when Jett made the survey on yesterday, and whether that mound was not the only one you knew of in the field.

Answer. There was a mound in her field west of her house. The east and west line of fence was not more than 10 or 15 steps, the north and south line of fence was near 40 or 50 steps from it, but I cannot give a correct guess, my memory being bad. I reckon the line between section 17 and 18 aforesaid was not more than 60 or 70 yards from it, and did not measure, others did.

Quest. You speak of conditional lines. Did you not hear from Samuel Hemphill that his or his mother's fence was on the conditional line, and did you ever hear complainant say any thing about it.

Answer. I did not understand anything of the sort from Samuel Hemphill, I have heard such things. Never heard Col. Wynn say anything about it.

Quest. You speak of the many alterations that have been made in Fisher's prairie and on and about the place where Mrs. Hemphill, Samuel, and the family of Hemphills resided in 1829. Are not there many alterations calculated to deceive a person unless he knows the old natural mounds, marks, and runs the lines, and were you not deceived in consequence of your not carefully examining those material marks, mounds, &c., when you gave it as your opinion that Samuel Hemphill did cultivate a part of the N. E. ¼ of section 18 aforesaid, in the year 1829?

Answer.—Those alterations are calculated to deceive a person, I never thought of being deceived, I did not think of the mound &c., but merely looked over the field, upon a close and minute examination I find I was deceived.

Quest.—Was not Mrs. Hemphill the mother of said Samuel Hemphill the head of the family in 1830? And did she not order and direct the farming affairs, and did Samuel take any more control than other members of her family?

Answer.—Yes, she was called so, don't know that she did. I think that Andrew Hemphill did for her. Samuel worked when he pleased, and played when he pleased.

his
JACOB ⋈ WAGGONER.
mark.

Sworn to, and subscribed with his mark, this 1st day of September, A. D., 1847.

JOHN WAGGONER, J. P.

And at the same time, to wit.: on the first day of September, 1847, and the place, before me also appeared John Bradley, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn, to tes-

tify the truth, the whole, and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there, on his oath aforesaid, depose as follows, to wit:

JOHN WAGGONER, J. P.

Question.—What is your age? How long have you resided in Arkansas? Do you know anything of the North East quarter of Sec. 18, in T. 16, S. of R. 25 W., in Fisher's prairie, South of Red River? If so, state when, and by whom it was first settled, and has it changed hands and possessions since you first knew it. State whether you ever traced the lines of said quarter section, and when if at all. And whether the same or any part thereof, was ever cultivated by one Samuel Hemphill.

Answer.—I am fifty-two years old, I have lived in Arkansas since 1818. I have lived in what is now Lafayette from that time to the present. I have known the N. E. ¼ of Sec. 18, in T. 16, S. of R. 25 W., aforesaid, before it was surveyed and since it was surveyed. When I first became acquainted therewith, one Massach Janes was living thereon, I first saw Janes in possession of it in 1828 or 1829. Janes sold it to one Doctor Joseph Jones in the year 1833 or 1834, and Doctor Joseph Jones sold it to complainant. I don't know the time, but do not think it was as late as 1835. I have traced the East and West and the North and South lines of said above mentioned quarter Section. I think I did so in the year 1841 or 1842, it might have been in 1843. I will not say positively about the dates, but by studying a little I could come at the exact time. I do not think that any part of it was ever cultivated by one Samuel Hemphill. It was always an undisputed quarter Section.

Quest.—Do you know the place that was cultivated in Fisher's prairie by Mrs. Hemphill, who is the mother of said Samuel Hemphill, in 1829. If so, state if the land so cultivated by the Hemphills ever came upon said North East quarter as aforesaid?

Answer.—I do know the place, I should suppose the place cultivated by Mr. Hemphill in 1829, would be entirely in Section 17 of the township, and range aforesaid, and to the best of my knowledge and belief, the land cultivated by said Hemphill, did not reach the N. E. ¼ of Section 18, in Township 16 aforesaid, by 50 or 100 yards. This fact I know from having traced the line. I run the line to the fence and took a sight from there, and I am satisfied it did not.

Question.—Do you know anything about a compass owned by Jesse Douglass? If so, state whether it was a correct one or not.

Answer.—I know the compass. Have followed it often. The situation it was in when I found it was bad. I went to the right 100 yards in a quarter of a mile. When I had it last it lacked 8½ degrees of being adjusted to the survey or lines. I set it to the old line. I got it in the year 1842, and think I kept it in possession 18 months. It is a good compass if properly adjusted. I set it by Mr. Morris's compass.

Quest.—Does not the defendant own and carry on a farm in Fisher's prairie, adjoining the quarter Section aforesaid. If so, how long has he been cultivating there?

Answer.—He does own and carry on a farm in said prairie. He purchased the same I think in 1834. I made the purchase of one Andrew Hemphill at that time for him, and he purchased himself of Samuel Hemphill. I may be mistaken as to the time, but I am positive about the facts and circumstances of which I speak. Defendant has been cultivating it from that time to the present. His farm is in Sections 16 and 17.

Question.—Has complainant lived on the adjoining tract to defendant ever since he bought of Joseph Jones in 1835. If so, state whether he has made any improvements.

Answer.—Complainant does live on the adjoining tract of land, and has lived there off and on, ever since he purchased of Joseph Jones. He has made many and considerable improvements on said N. E. ¼ of Sec. 18 aforesaid.

Question.—Did or did not the defendant, Garland, know of those improvements, or might he not have known of them. State any other fact that you may know of importance to either party.

Answer.—I know of no reason why he should not have known of them. I know so much of the matter, that I don't want to commence talking about it. I can only say, that there is such a damned big pile of filth, that I don't want to touch it.

Cross-Examined.

Question.—At whose instance did you run the lines of the N. E. ¼ of Sec. 18 aforesaid?

Answer.—I was called on by complainant to prove a pre-emption on said quarter Section. I could not make any statements touching the same, 'till I had traced the lines. I did run the lines in order that I might know exactly about it, and the result was as I have already stated. I also went at the instance of a Mr. Wilson. I looked at the lines twice.

Question. At the time you examined the lines and the corners was it for the purpose of proving the pre-emption, if not, for what purpose and whose instance?

Answer. It was for the purpose of proving a pre-emption for Col. Wynn.

Question. How long has Garland had any portion of the N. E. ¼ section 18 in cultivation?

Answer. I think since 1838. I cannot say how long before has had a small portion.

Question. Did you know of any agreed line between Massach H. Janes, and the Hemphills.

Answer. I do not, but I know of an agreed line between Massach H. Janes and Philip Duty.

Question. To whom did Philip Duty sell his place, and was it the same place the Hemphills, or some of them afterwards owned.

Answer, Philip Duty sold to some person, but to whom I do not know. The Hemphills were afterwards in possession.

Question. Do you know anything of the conditional line between Philip Duty and Massach H. Janes?

Answer. The line was the west line of Philip Duty's fence on the west side of his field.

Question. How far was the agreed line of which you speak from the road and ditch which Col. Wynn now has running south from his house through the prairie.

Answer. It is a long time since I have been there. It may be 150 yards or more, but it is not a quarter of a mile.

JOHN BRADLEY.

Sworn to and subscribed before me, this 1st day of Sept., 1847.

JOHN WAGGONER, *J. P.*

Andrew Hemphill, a witness known to me to be of lawful age, being to me produced, and by me first duly sworn to testify the truth, the whole truth and nothing but the truth, touching the matters in controversy in the suit aforesaid between the parties aforesaid, did on his oath depose and say:

Question. What is your age and place of residence?

Answer. I am in my forty-sixth year. My place of residence, Sevier county, Arkansas.

Question. How long have you resided in Arkansas, and at what points in said State?

I have resided in Arkansas since 1812. I resided in Clark county, Arkansas, till 1829, and came from that place to the county of Lafayette in January, 1829, and settled in what is called Fisher's prairie, on south side of Red river, and lived there about seven years. I then removed to Sevier county, Arkansas, where I have resided ever since.

Question. Who did you live with at the time you settled in Fisher's prairie, in Lafayette county?

Answer. I had a family at that time. No one but myself and our family lived in my house.

Question. If you had a mother at that time where was she living?

Answer. She was living at that time on section 17 in township 16 S. of R. 25 W., the same being in Fisher's prairie. She had then three sons with her, viz: Samuel Hemphill, John S. Hemphill, and James B. Hemphill.

Question. Did or did not your mother cultivate lands in Fisher's prairie in 1829, and other years? If so, state what land it was.

Answer. She cultivated, together with her sons aforesaid and her hands, the N. W. ¼ of section 17, a portion also of the S. W. ¼ of

same section, and a small portion of section 20 all in E. 16 R. 25 W. There was also a small portion of the S. E. ¼ of section 18, in the Turnpike and range aforesaid. The above lands were cultivated in 1829 by the above named persons; in the year 1830, they were cultivated by my mother and her hands, and her youngest son, James.

Question. Was, or was not your mother the head of the family in 1829, and managed the farm?

Answer. She was the head of the family. She had but very little to do with superintending the farming matters. I attended to her matters some time and so did Samuel Hemphill.

Question. If you know where Samuel Hemphill is now, please state, and state when he abandoned his home in the county of Lafayette, if at all?

Answer. He is in Sevier county, Arkansas, and was when I left home several days ago. Samuel Hemphill abandoned his residence in Fisher's prairie, in Lafayette county, some time between the months of February and April, A. D. 1830. He remained absent from said county until the winter of the year 1830 and '31. He then went to Luckapaw, and remained there some few weeks. He then returned to Fisher's prairie as a citizen, and stayed till 1833. He then went to Clark county, Arkansas, and remained there until 1837 or 1838, and then went to Sevier County, Arkansas, and remained there one season, and then went to Red River county, Texas, where he remained as a citizen some five or six years.

Question. Are you, or are you not acquainted with the N. E. ¼ of section 18 in Township and range aforesaid, situate in Fisher's prairie and on which complainant resides? If so, state whether or not the same or any portion thereof was ever cultivated by Samuel Hemphill. Tell all you know.

Answer. I am acquainted with the tract of land you mention. It lies and is situate in Fisher's prairie, in the county of Lafayette, and *and* lies adjoining the several tracts of land cultivated by my mother and those mentioned in conjunction with her in 1829. This cultivation carried on by my mother and my brother Samuel Hemphill and others in 1839, did not extend to the N. E. ¼ of section 18 aforesaid, by nine or ten rods. It may be a little over or a little under. I think I am coreect, for I took pains to ascertain. I do know that said Samuel did not cultivate any portion of said N. E. ¼ of section 18 in the year 1829 or any other year. All that was cultivated by my mother, Samuel, and the others mentioned by me in conjunction with them, was under one fence, for they all lived in the same house, and cultivated the same ground.

Question. If you can, please state who has cultivated the N. E. ¼ of sec. 18 in T. 16, S. of R. 25 W. in 1829 and 1830.

Answer. A man by the name of Manack Janes was in possession, living and cultivating a portion of said above named quarter

section, and had been living on the same for some time before I came to Fisher's Prairie.

Question. Which way did the fence, made by your mother and her sons and hands, which separated them from Janes, run in 1829 ?

Answer. It run south and north, or nearly so, varying a little east of north.

Question. State, if you can, where the fence stood on yesterday ? If so, who was present, and for what purpose you were on the premises, and how far the section line between 17 and 18 from where said fence was when your mother and brother Samuel cultivated in the Prairie in 1829, state all you know about it.

Answer. I saw where it stood on yesterday, Jas. P. Jett, John Field, John Waggoner, Jacob Waggoner, William Wynn and Simon J. Higgs were present. I was there for the purpose of ascertaining whether my mother and brother did in 1829 or 30 cultivate any portion of the N. E. ¼ of sec. 18 in T. 16, S. R. 25 West. James P. Jett run the lines between sections 17 and 18 and I was with him, and it passed nine or ten rods west of the line of fence which inclosed the land cultivated by my mother and brother Samuel and her sons and hands in 1829. I went on yesterday and found where the old house of my mother stood, and from a correct knowledge of the distance from said house to the western extremity of the land she and her sons cultivated in 1829 and 1830, and having made the rails that made the fence, and having ploughed and hoed in the field, and having cultivated the same myself, I could tell within a very few feet of where the fence stood. All the land cultivated by mother and Samuel and her other sons in 1829 and 1830 was under one unbroken fence, and the land cultivated by them in those years, does not come nearer to the N. E. ¼ of sec. 18, T. 16, of R. 25 west aforesaid at any point than nine or ten rods.

Question. State whether there was on the land cultivated by your mother and others in 1829 any mounds ? If so, how many, and how far were they from the line between sections 17 and 18, in the Township aforesaid, and how near did the nearest corner to the line of fence of your mother running north and south ?

Answer. There were a good many mounds in the field. There were one or two mounds that stood within 15 feet from the fence running east and west, and something further from the fence running north and south.

Question. State how you know that the land cultivated by your mother and Samuel Hemphill and other did not embrace any portion of the N. E. ¼ of section 18, in T. 16, S. of R. 25 west. State all you know and minutely, and what were your means of knowing ?

Answer. I know the fact from being well acquainted with the premises from having lived thereon and cultivated, and likewise having measured the same.

Question. State whether or not you and your brother Samuel Hemphill did not sell to said Garland pre-emption rights to land in said Fisher's Prairie. If so, state what lands were embraced in said sale and all you know touching the same.

Answer. We sold to him our improvements in Fisher's Prairie. I bound myself to prove up a pre-emption if I was entitled to one, and I think Samuel Hemphill did the same. My pre-emption embraced the N. E. frl. ¼ of sec. 20. I likewise sold an improvement to him on the S. E. frl. ¼ of sec. 17, in Township aforesaid. Samuel Hemphill sold to him his improvement on the N. E. and S. W. ¼ of sec. 17.

Question. How near did you live to your mother and Samuel Hemphill in 1829 and 1830?

Answer. About three quarters of a mile from Samuel and my mother in the year 1829, and about the same distance from my mother in the year 1830, said Samuel having left Fisher's Prairie, Lafayette county, some time between February and April, in the year 1830.

Question. Can you say upon your oath that your brother Samuel was not a resident of Fisher's Prairie in the month of May, A. D., 1830?

Answer. My brother Samuel Hemphill was not a resident of Fisher's Prairie at any time during the month of May, A. D., 1830.

Question. State if you can, to whom and when did Massach Janes sell the N. E. ¼ of sec. 18 in T. 16 S. of R. 25 W., and what improvements have been made thereon since said Janes sold the same?

Answer. I think Janes sold the above named quarter section to Richard Pryer, as agent for one Joseph Jones, in 1833, and said Joseph Jones through his agent, a man by the name of Mulhollan, sold the same to complainant in the year 1835, and since that time the said complainant has made considerable improvement on said ¼ section.

Question. State if the said defendant did not own and cultivate a farm adjoining said quarter section when complainant bought the same of Joseph Jones?

Answer. He did, and is cultivating the same at this time and has been ever since Wynn purchased of Jones in 1835.

Cross Examined by Defendant:

Question. Can you state the year that Samuel Hemphill was born?

Answer. I can. He was born January 16th, 1806 or 1807.

Question. Who owned the improvement on which your mother and Samuel Hemphill resided and cultivated, in 1829 and 1830?

Answer. It was purchased by Samuel Hemphill from Phillip

Duty, it was purchased for the benefit of my mother and John S. Hemphill, and James B. Hemphill, younger brother of said Samuel as also for the benefit of said Samuel.

Question.—Did Samuel Hemphill own, and have on the place, in 1829 & 1830, cattle, horses and hogs, of his own property?

Answer.—He frequently bought and sold, but that bought or raised, was considered the joint property of the whole family, Samuel kept his clothing with my mother, in 1829, and during the year 1830, the most of his clothing was at my mother's in Fisher's prairie. At no time did he take more than three suits, and the residue of his clothing remained with the family.

Question.—Where was said Samuel in May, 1830?

Answer.—He was in Clark county, Arkansas, he was absent until pretty late in the fall or winter of said year. I think he was back twice at least, from the time he left, 'till 1831. He might have been back oftener.

Question.—Did Samuel, in 1829 or 1830, take from the place in Fisher's prairie, any catttle, hogs, or horses, more than his riding horse?

Answer.—He took his riding horse, and I think a lead horse, and nothing else that I know of.

Question.—Did Samuel Hemphill return and reside on the place after he left in 1830?

Answer.—He never did reside on it after the year 1829. During his absence my mother and myself exchanged places, which took place in the fall of 1830 or 1831, and I removed to the one on which said Samuel and my mother resided in 1829, and my mother took possession of the one I had lived on on the river. The interest of said Samuel to the stock, crop, &c., continued jointly with the others, 'till I took possession, in 1830 or 1831.

Question.—Do you know anything of a claim of Massach H. Janes, to a league and laban of land, under the government of Mexico, in Fisher's prairie, and where did the line of said claim run, through Fisher's prairie, and where did said line strike Col. Wynn's improvement.

Answer.—Janes started his survey at the conditional line between Massach H. Janes and Samuel Hemphill, and at the time said line was run I lived on, and owned the place, formerly owned by Samuel Hemphil, and run with said conditional line North and South, through the prairie, and said conditional line at the half mile corner, between Section 17 and 18, was nearly two hundred yards West of the corner, and at the S. E. corner of Section 18, said conditional line was something over three hundred yards. I only measured it by my eye. There was two hickory trees standing in the prairie, and the conditional line was to range with the direction of these two trees through the prairie. One of the trees stood near the head of the ditch which is now dug on or near the line.

Question.—Did you not and those under whom you claimed the

improvement which you lived upon, and which had been occupied by Samuel Hemphill, always claimed up to said conditional line.

Answer.—I did, and so did Samuel Hemphill, from whom I got possession, and to whom I gave possession.

Question.—At whose request did you examine the lines and corners of the N. E. ¼ of Sec. 18, in Sec. 16, S. R. 25 W. on yesterday.

Answer.—Col. Wynn wanted me to go and see the lines and corners.

Question.—Did you not advise Col. Wynn to have a survey of said quarter Section and let you see?

Answer.—I do not recollect that I did, but I was requested by letter from John Field, Esqr., to meet him at this point.

Re-Examined by Complainant.

Question.—Was not those conditional lines to give way to surveys? And were they binding otherwise than 'till the survey was made?

Answer.—I don't recollect about the understanding now.

Question.—Were you not informed by complainant, that he would want your depositions? And did you not state that it would be necessary for you to trace the lines of the quarter Section in controversy, before you could speak definitely about any of the matters about which you supposed you would be interrogated?

Answer.—Complainant did inform me that he would want my testimony, and I told him I would have to trace the lines of the quarter sections aforesaid, before I could speak with certainty about the matter, about which I supposed I would be interrogated?

ANDREW HEMPHILL.

Sworn to, and subscribed before me, this 1st day of September, A. D., 1847.

JOHN WAGGONER,
J. P.

And at the same time and place, before me, also appeared James P. Jett, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn, to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy, in the suit aforesaid, did then and there, on his oath aforesaid, depose as follows, to wit:

Question.—Where do you reside? Are you a surveyor, and did you run the lines on the 31st of August, A. D., 1847, and since between Sections 17 and 18, in T. 16, S. of R. 25 W. If so, state—and also state who was with you at the time, and whether your surveys were correct. State anything you know.

Answer.—I reside in Washington, Hempstead county, Arkansas. I have studied surveying, and have practiced it codsiderably, I run the line on the 31st day of August, A. D., 1847, between Sections 17 and 18, in T. 16, S. of R. 25 west. John Waggoner, Jacob Waggoner, Simon L. Higgs, Andrew Hemphill, John Field, Esqr, and Col. William Wynn, were present. On the morning of Sept. 1st, 1847, I retraced the line with a different compass, in company with Col. Wynn, the other gentlemen named being absent. I did this because I was not well acquainted with the compass with which I run the line on the 31st. The corner made by the last survey, is about 10 or 12 feet east of the previous one, and I believe it to be correct, and to correspond with the original survey made by the United States.

JAMES P. JETT.

Sworn to and subscribed before me, this 1st day of November, A. D. 1847.

JOHN WAGGONER, *J. P.*

The hour of five o'clock in the evening having arrived, the further taking of depositions is adjourned till to-morrow morning at 9 o'clock.

Attest, JOHN WAGGONER, *J. P.*

Thursday morning, Sept. 2, A. D. 1847, 9 o'clock A. M.

The hour of 9 o'clock having arrived, the parties appeared.

Attest, JOHN WAGGONER, *J. P.*

Simon L. Higgs, a witness personally to me well known, being to me produced at the place in the caption mentioned, and being by me first duly sworn to testify the truth, the whloe truth and nothing but the truth touching the matters in controversy between the parties aforesaid, did on his oath depose and say:

Question. What is your age? Where do you reside, and how long have you so resided, and do you know the parties to this suit? If so, state.

Answer. I am now fifty years old. I reside in Lafayette, and have resided in said county since 1823. I am acquainted with the parties to this suit.

Question. State whether you are acquainted with a tract of land known as Fisher's prairie, lying on the south side of Red River, and whether you were ever there, and when you were first there?

Answer. I am acquainted with a tract of country called Fisher's prairie as aforesaid, very intimately, I have been there, off and on, ever since I came to Lafayette county.

Question. State if you know Samuel Hemphill. If so, where did he reside to 1829 and '30. State particularly.

Answer. I am acquainted with Samuel Hemphill, and first became acquainted with him in 1829. As well as I recollect, I think he resided in 1829 in a place where defendant once lived, called the Hemphill's place, that was his only permanent home in 1829. I never saw him in Fisher's prairie, or in Lafayette county in 1830, but I understood from his neighbors in Fisher's prairie, that he had abandoned his residence there; indeed it was a notorious fact. He may have been in said prairie and county early in the year 1830 but I never saw him there after 1829. I frequently passed through and about Fisher's prairie in the year 1830, and frequently stayed all night with Andrew Hemphill, who lived in said prairie on the same place, that Samuel Hemphill lived on and cultivated in 1829, but did not see or hear of said Samuel in the neighborhood.

Question. State if you knew the N. E. ¼ of section 18 in T 16 S. of R. 25 West, and if so, who cultivated it, and lived on it, when you first became acquainted with it, and who owned it since, and who owns it now. State all you know concerning the history of said N. E. ¼ of section 18 aforesaid; state what and who made improvements thereon.

Answer. I am acquainted with the N. E. ¼ of section 18 in T. 16 S. of R. 25 West. and have been acquainted therewith ever since 1825. When I first became acquainted familiarly with it, a man by the name of Massach Janes owned and cultivated it; said Janes I understood, sold to a man by the name of Joseph Jones, and Joseph Jones sold it to the complainant sometime in the year 1835, and said complainant has cultivated ever since; when complainant purchased, there was a log house and a dwelling house thereon, and a few indifferent negro cabins; after complainant bought it, he made many and valuable improvements; since he has owned it and cultivated it, I should suppose the improvement put thereon by said complainant, would be well worth upwards of three thousand dollars.

Question. State if you know who Samuel Hemphill lived with in 1829, and whether he ever cultivated any portion of the said N. E. quarter of sec. 18 in T. 16 S. of R. 25 West.

Answer. I don't know very much about his concerns. I know he lived with his mother on the place that I have already stated he lived on in 1829. He never cultivated any portion of the N. E. ¼ of section 18 in T. 16 S. of R. 25 W. that I know of; I was present a day or two since when James P. Jett, Esq., run with chain and compass the line between section 17 and section 18 aforesaid, and some of the land cultivated by Samuel Hemphill in 1829, is embraced in the N. E. ¼ of section 18 in T. 16 S. of R. 25 West aforesaid. I saw where the fence that enclosed the land, cultivated by said Samuel Hemphill in 1829 stood, and it lacked nine or ten rods of reaching any part of the N. E. ¼ of section 18 in township

aforesaid. I was better acquainted with the locality of the same in 1831 than I was in 1829 and 1830; in order that I might be correct, I went to where the house occupied by the Hemphills in 1829 stood. I found where it stood, I also found where the well had been, the way I knew where the former stood, I had some cattle often about there, and have stayed about it. Hemphills and I knew pretty well the distance from the house to the fence that was north of the house, and running north and south or pretty much so; when I went to look for the old house, Andrew Hemphill, John Waggoner, Jacob Waggoner, James P. Jett, were in company with me. Andrew Hemphill and myself stepped from where the old house stood, towards the string of fence above mentioned. I knew pretty well where the fence had stood and that was the way I told. I am positively certain that I am not much wrong as to where the Hemphill fence stood. I am certain I did not miss its locality nine or ten yards.

Question. You speak of claiming the N. E. ¼ of section 18, Township 16, aforesaid; state if you ever heard Samuel Hemphill claim it?

Answer. I never heard Samuel Hemphill claim it, nor did I ever hear any other Hemphill set up any claim to it, I never heard of its being a disputed quarter section till here lately—that is until the parties hereto got into law about it.

(*Cross-examined by Defendant.*)

Question. At what time did Samuel Hemphill remove from Fisher's Prairie?

Answer. I cannot tell.

Question. At what time were the surveys made in and about Fisher's Prairie?

Answer. In 1840, if I do not mistake.

Question. In 1829, 1830, and in 1831, was there not an open space between S. Hemphill's place and the place owned by Massach H. Janes of prairie unenclosed?

Answer. There was.

Question. What distance from one fence to the other?

Answer. I cannot say with certainty, as I never measured it.

Question. Can you tell the names of the persons living on the Prairie?

Answer. I cannot name all, M. Cryer, M. H. Janes, the Hemphills, and perhaps some others.

Question. Where did you reside in 1829, 1830, 1831?

Answer. I resided in Long Prairie, but was frequently in Fisher's Prairie, in 1831, and occasionally before and after that.

Question. What distance was the old well from the location of the old house?

Answer. It was some small distance, I cannot say with certainty, perhaps 20 or 30 yards.

S. L. HIGGS.

Lafayette County, S. C.

I, John Waggoner, an acting and duly commissioned Justice of the Peace, in and for the County of Lafayette, in the State of Arkansas, do hereby certify and make known that the foregoing depositions of Jacob Waggoner, John Bradley, Andrew Hemphill, James P. Jett and Simon L. Higgs, were duly taken before me the said Waggoner, on the 31st day of August, A. D., 1847, and the 1st day of September, A. D., 1847, and the said Bradley and Hemphill and Jett, on the first day of September, and the said Higgs, on the 2d day of September A. D., 1847, between the hours and at the place in the caption hereof above mentioned, that the examinations, responses, and statements of each of said deponents were reduced to writing in my presence and by the said deponents respectively sworn to, and subscribed in my presence, at the time and place aforesaid; and that said Waggoner and Bradley and Higgs, are residents of said Lafayette County, in the State of Arkansas, and that said Jett is a resident of Hempstead County and State aforesaid, and said Hemphill is a resident of Sevier County, of said State.

In testimony whereof, I, John Waggoner, an acting Justice of the Peace as aforesaid, do hereunto set my hand, at the residence of William Wynn, above named, at the cut-off on Red River, in the County and State aforesaid, this the 2d day of September, A. D., 1847.

JOHN WAGGONER,
J. P.

Justice fees for taking the above depositions is $5 84.

Opened and published by order of Court, April 30, 1849.

A. BYRNE,
Clerk.

Depositions taken on the part of complainant, on the 20th September, 1848, in pursuance of notice and commission to ——— depositions attached, all of which appear in words and figures following, to wit:

To JOSIAH GARLAND, ESQR.

Take notice that I will attend at the residence of James McDonald, Esqr., in Sevier County, Arkansas, on the 20th day of September, A. D., 1848, and will then and there between the hours of 8 o'clock, A. M., and 6 o'clock, P. M., of said day, take the depositions of witnesses, to be read in my behalf on the trial of a certain cause now pending in the Circuit Court of Lafayette County in the State aforesaid on the Chancery side thereof, wherein I am

complainant, and you are defendant, and I will continue taking said depositions from day to day, until all are taken.

WILLIAM WYNN.
By PIKE, COCKE & FIELDS,
Solicitors.

August 23d, 1848.

I executed the within notice on the within named Josiah Garland, on the 23d day of August, A. D., 1848, in Hempstead County, Arkansas, by then and there delivering to him a true copy thereof.

Executing 50 cents.

E. NANCE,
Sheriff.
By J. C. KERBEY,
D. S.

STATE OF ARKANSAS, *County of Lafayette.* } In Lafayette Circuit Court, on the Chancery side thereof Jan'y Term, 1848.

WILLIAM WYNN, Complainant,
vs.
JOSIAH GARLAND, Defendant. } In Chancery.

At this day came said parties by their solicitors, and on motion it is ruled and ordered that they have and leave is hereby granted unto them to take the depositions of witnesses generally, before any Judge or Justice of the Peace, of any of the States of the United States or Territories thereof, to be read in evidence on the final hearing of this cause, and that commissions issue for that purpose.

A true copy from the record,
Attest,

J. D. JONES,
Clerk.
By L. MARTIN,
D. C.

To any Judge or Justice of the Peace of any of the States of the United States or Territories thereof, greeting:

WILLIAM WYNN,
vs.
JOSIAH GARLAND.

Know ye, that we reposing confidence in your prudence and fidelity, do by these presents, give you authority diligently to examine all witnesses whatever, that said William Wynn may bring before you, in a certain suit now pending in our Circuit Court, in

and for the County of Lafayette, and on the Chancery side thereof, in which William Wynn is complainant, and Josiah Garland is defendant. Therefore, we desire you that at certain times and places by you to be appointed for that purpose, you cause the witnesses to come before you, and that you then and there examine them, separately and apart, upon their corporal oath first taken before you upon the Holy Evangelists, that you reduce such examination to writing, and when you shall have taken them, that you send the same with this commission closed up under your seal, to us in our said Circuit Court at the town of Lewisville, at the County aforesaid, without delay.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of said Court at office, this 8th day of September, in the year of our Lord one thousand eight hundred and forty-eight, and in 72d year of American Independence.

JOHN. D. JONES,
Clerk.

By S. MARTIN,
D. C.

The execution of this Commission appears by reference to the schedule hereto annexed.

JUSTICE OF THE PEACE.

Deposition of witnesses taken and subscribed before me, James M. McDonald an acting Justice of the Peace for the county of Sevier, and State of Arkansas, duly commissioned as such on the 20th day of September, A. D. 1848, between the hours of 8 o'clock in the morning and six o'clock in the afternoon of said day at the residence of James M. McDonald, in the county and state aforesaid, in pursuance of a commission hereto annexed and to be read as evidence in a certain cause now pending in the Circuit Court of Lafayette county in the State aforesaid, on the chancery side thereof wherein William Wynn is complainant aud Josiah Garland is defendant on the part of the complainant.

Andrew Hemphill, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn to testify the truth, the whole truth and nothing but the truth touching the matters in controversy in suit aforesaid, did on his oath then and there depose as follows, to wit:

My age is 46 years old, my place of residence is in Sevier county, Arkansas. He says he is acquainted with both the parties to the above entitled suit. He says that he once made a deposition in the above entitled cause, in the year 1847. He says he is well acquainted with Samuel Hemphill, and has been ever since he was

born. He says that Samuel Hemphill was his brother, and he further states that Samuel Hemphill departed this life on the eighth day of September, 1848, in the county of Sevier, Arkansas. He says that he has heard Samuel Hemphill say that he never did sell any improvement or right of pre-emption to Josiah Garland, to the defendant in this cause on the N. E. ¼ of sec. 18 T. 16 S. of R. 25 W., but he has heard Samuel Hemphill say that he sold an improvement, together with all the right of pre-emption, that he Samuel Hemphill might be entitled to, to the said Josiah Garland the defendant as aforesaid which improvement is situated on N. W. ¼ and the S. W. ¼ of sec. 17 T. 16 S. R. 25 West. He states he was present twice when James Jett run the lines with chain and compass. He says the first time the line was run I was present, and it was in the latter part of the Summer 1847, the second time it was run, I was present and Samuel Hemphill was present also and saw the line run. He states that he believes that he had made his deposition previous to running the line, the last time. He says that Samuel Hemphill was present when James Jett run the line in the fall, 1847, and that he Samuel Hemphill stated positively that he never did cultivate any part of the N. E. ¼ in sec. 18 T. 16 S. R. 25 W., but he did in the year 1829 cultivate a portion of the N. W. ¼ of sec. 17 T. 16 S. R. 25 W. He, Samuel Hemphill, stated to said deponent at the time he made the affidavit he was induced to believe that he cultivated a portion of the N. E. ¼ of sec. 18 in township and range as aforesaid from a plat of said township shown to him by Josiah Garland, but he said on being present at the running of the line and examining the premises he found his cultivation was on the N. W. and S. W. quarters of section 17, township and range as aforesaid. He, Samuel Hemphill, made this statement at the time he was present when Jett run the line; and further this deponent sayeth not.

ANDREW HEMPHILL.

(*For Plat, see Original, page* 173.)

Sworn to and subscribed before me, this the 20th day of Sept., 1848.

JAMES M. McDONALD, *J. P.*

And at the same time and place before me also appeared James B. Hemphill, a witness known to me to be of lawful age, and being by me first duly sworn to testify the truth, the whole truth and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there on his oath depose as follows, to wit:

Deposes and says: that his age is thirty-two years old, and that his residence is in Sevier county, State of Arkansas. He says he

was acquainted with Samuel Hemphill, and has been ever since he can recollect. That he was an older brother. He further states that he was a minor and lived with his mother the year 1829, and cultivated or assisted in Fisher's prairie, which premises Samuel Hemphill sold to Josiah Garland. He further says that Samuel Hemphill assisted in cultivating the premises in the same year. My mother Nancy Hemphill remained in possession of the same premises in the year 1830. My mother Nancy Hemphill and Andrew Hemphill cultivated the same premises that said Samuel Hemphill sold to Josiah Garland in Fisher's prairie, all situate in Lafayette county, State of Arkansas. That Samuel Hemphill did not cultivate any part in Fisher's prairie in the year 1830. The most of the year 1830 Samuel Hemphill resided in Clark county and that my mother Nancy Hemphill during her life was considered and actually was the head of the family during her residence in Fisher's prairie on said premises. That the said Samuel Hemphill sold to Josiah Garland; and further this deponent sayeth not.

J. B. HEMPHILL

Thomas B. Haynie, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn to testify the truth, the whole truth and nothing but the truth touching the matters in controversy in the suit aforesaid, did on his oath then and there, depose as follows, to wit:

Deposes and says, he is sixty-two years old, and that his residence is in Sevier county, state of Arkansas. He says that he has been acquainted with Andrew Hemphill for twelve years, and that he resided the most part of that time within seven miles of said Andrew Hemphill. He says that his character for truth and veracity is good so far as he knows, and I would believe him under oath, further this deponent saith not.

THOS. B. HAYNIE

Sworn to and subscribed, before me, this, the 20th day of September, A. D., 1848.

JAMES M. McDONALD,
J. P.

Joseph Camp, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters in controversy, in the suit aforesaid, did on his oath, then and there, depose as follows, to wit:

Deposes and says, that he is twenty-eight years old, and that his residence is in Sevier county, state of Arkansas. He states that

he has been acquainted with Andrew Hemphill for two years and upwards. He resides within four miles of Andrew Hemphill. He has always looked on his character for truth and veracity, as good as as any man. He says he would believe him under oath. Further this deponent saith not.

JOSEPH CAMP.

Sworn to and subscribed, before me, this, the 20th day of Sept., 1848.

JAMES M. McDONALD,
J. P.

Willis Blaylock, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there, on his oath aforesaid, depose as follows, to wit:

Deposes and says, that he is twenty-seven years old, and that his residence is in Sevier county, state of Arkansas. He says he has been acquainted with Andrew Hemphill near five years, and he lives within one mile and a half. He says that his character in the neighborhood, for truth and veracity, is good, so far as he knows, and he would believe him under oath. Further, this deponent saith not.

WILLIS BLAYLOCK.

Sworn to, and subscribed, before me, this, the 20th day of September, A. D., 1848.

JAMES M. McDONALD,
J. P.

F. E. Cartwright, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn, to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy, in the suit aforesaid, did then and there, on his oath aforesaid, as follows, to wit:

Deposes and says, that he is twenty-eight years old, and that his residence is in Sevier county, state of Arkansas. He says he has been acquainted with Andrew Hemphill six or seven years, and he has resided a little over five miles of him. He says his character for truth and veracity in the neighborhood where he lives is good,

and he would believe him under oath. Further this deponent sayeth not.

F. E. CARTWRIGHT.

Sworn to, and subscribed, before me, this, }
the 20th day of September, A. D., 1848. }

JAMES M. McDONALD.
J. P.

Thomas Wright, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn, to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy, in the suit aforesaid, did then and there, on his oath aforesaid, depose as follows, to wit:

Deposes and says, that he is twenty-three years old, and that his residence is in Sevier county, state of Arkansas. He states that he has been acquainted with Andrew Hemphill, ever since I have been riding as deputy sheriff, which is thirteen months. He states that his character for truth and veracity is good in the neighborhood where he lives, so far as my knowledge extends. He says he would believe him under oath. Further, this deponent sayeth not.

THOS. WRIGHT.

Sworn to, and subscribed, before me, this, }
the 20th day of Sept., A. D., 1848. }

JAMES M. McDONALD,
J. P.

Robert H. Scott, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy, in the suit aforesaid, did then and there, on his oath aforesaid, depose as follows, to wit:

Deposes and says, that he is fifty-nine years old. He resides in Sevier county, state of Arkansas. He says he has been acquainted with Andrew Hemphill for twelve years. He lives a little over six miles from Andrew Hemphill. He says his character for truth and veracity, is good in the neighborhood where he lives, so far as he knows. He says, from my personal acquaintance and dealings, I have had with Andrew Hemphill, he has found him to be as correct

as any man. Therefore he would believe him under oath. Further this deponent saith not.

ROBT. H. SCOTT.

Sworn to and subscribed before me, this, the 20th day of Sept., A. D., 1848.

JAMES M. McDONALD,
J. P.

Daniel R. Wynn, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn to testify the truth the whole truth and nothing but the truth, in regard to the matters in controversy, in the suit aforesaid, did then and there in his oath aforesaid depose as follows, to wit:

Deposes and says he is twenty-eight years old, and that his residence is in Sevier County, State of Arkansas. He states that he has been acquainted with Andrew Hemphill about eight years,—he resided a portion of that time within seven miles of Andrew Hemphill. He states that his character for truth and veracity is as good as any man's. He states he would believe him under oath. Further this deponent saith not.

D. R. WYNN.

Sworn to and subscribed before me, this the 20th day of Sept., A. D., 1848.

JAMES M. McDONALD,
J. P.

Thomas W. Scott, a witness known to me to be of lawful age being to me at the time and place aforesaid produced, and being by me first duly sworn to testify the truth, the whole truth and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, and then and there on his oath aforesaid, depose as follows, to wit:

Deposes and says that he is forty-four years old, and that his residence is in Sevier County, State of Arkansas. He states that he has been acquainted with Andrew Hemphill for nineteen years. He resides within six miles of Andrew Hemphill. He states that his character for truth and veracity in the neighborhood where he

lives is good. He states that he would believe him under oath, under any circumstances. Further this deponent saith not.

THOS. W. SCOTT.

Sworn to and subscribed before me, this }
the 20th day of September, A. D., 1848. }

JAMES M. McDONALD,
J. P.

Fountain G. Stone, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn to testify the truth, the whole truth and nothing but the truth in regard to the matters in controversy in the suit aforesaid, did then and there on his oath aforesaid, depose as follows, to wit:

Deposes and says that he is thirty-eight years old, and that his residence is in Sevier County, State of Arkansas. He states that he has been acquainted with Andrew Hemphill for nine years. He resides within six miles of Andrew Hemphill. He states that his character for truth and veracity is good in the neighborhood so far as he knows. He states from the acquaintance he has with Andrew Hemphill, he would be bound to believe him under oath. Further this deponent saith not.

F. S. STONE.

Sworn to and subscribed before me, this }
the 20th day of September, A. D., 1848. }

JAMES M. McDONALD,
J. P.

I, James M. McDonald, an acting and duly commissioned Justice of the Peace, in and for the County of Sevier, in the State of Arkansas, do hereby certify and make known that the foregoing depositions of Andrew Hemphill, James B. Hemphill, Thos. B. Hayniè, Joseph Camp, Willis Blalock, Finis E. Cartwright, Thos. Wright, R. H. Scott, D. R. Wynn, Thos. W. Scott, and Fountain G. Stone, were taken before me, on the 20th day of September, A. D., 1848, between the hours and at the place in the caption hereof above mentioned. That the examinations, responses, and statements of each of said deponents were reduced to writing, in my presence, and by the said deponents respectively, sworn to and subscribed in my presence at the time and place aforesaid, and that said depo-

nents are residents of the County of Sevier, in the State of Arkansas.

In testimony whereof, I, James M. McDonald, Justice of the Peace, do hereunto set my hand at my residence, in the State of Arkansas, this the 20th day of September, A. D., 1848.

JAMES M. McDONALD,
J. P.

(*Witnesses Fees.*)

Andrew Hemphill,	$1 00
James B. Hemphill,	1 00
Thos. B. Haynie	1 00
Joseph Camp,	1 00
Willis Blalock,	1 00
F. E. Cartwright,	1 00
Thos. Wright,	1 00
R. H. Scott,	1 00
D. R. Winn,	1 00
Thos. W. Scott,	1 00
F. G. Stone,	1 00
Justices fees,	$11 00
To swearing eleven witnesses, at 6¼	62½
To writing depositions at 6 cts. 100 words,	$1 77
Certificate,	50
	$2 89½

JAMES M. McDONALD,
J. P.

STATE OF ARKANSAS, *County of Sevier.* } *S. Ct.*

I, Ira N. Holman, as Clerk of the Circuit Court, and Ex-officio Clerk of the County Court, in and for the County of Sevier, aforesaid, in said State, do hereby certify that James M. McDonald, Esq., before whom the foregoing depositions were taken, is now and was at the time of taking the same, an acting Justice of the Peace, in and for the County of Sevier, duly commissioned and qualified that full faith and credit are and ought to be given to all his official acts, and that this signature annexed to said depositions, purporting to be his, is genuine.

In testimony whereof, I have hereunto set my hand as Clerk as aforesaid, and affixed the seal of said Circuit Court, it being the

seal of my office, at office in the term of Paraclifta, this 19th day of December, A. D., 1848.

[SEAL.] J. N. HOLMAN,
Clerk.

Opened and published by order of Court, April 30, 1849.
A. BYRNE,
Clerk.

Depositions in pursuance of a commission and notice thereunto attached, taken on the part of the complainant on the 9th and 10th days of October, 1849, appear in words and figures following to wit:

WILLIAM WYNN, Complainant,
vs.
JOSIAH GARLAND, Defendant. } In Chancery.

IN THE LAFAYETTE CIRCUIT COURT,

(*To Josiah Garland, Esq.*)

Take notice that in pursuance of a commission issued in the above case, I will on the 9th day of October, A. D., 1848, at the tavern house of Thomas Brooke, Esq., at the town of Louisville, in the county of Lafayette, in the State of Arkansas, proceed to take the deposition of witnesses to be read in evidence in my behalf on the trial of the above cause, and that I will continue from day to day until they are all taken.

WILLIAM WYNN.

By COCKE, PIKE and FIELD,
His Solicitors.

September 23d, 1848.

Notice of service of said notice, appears endorsed thereon, in words and figures following, to wit:

I do solemnly swear that I executed the within notice on the within named Josiah Garland by going to his place of abode in the County of Lafayette, in the State of Arkansas, on the 27th day of September, 1848, then and there delivering to a white member of his family, over the age of fifteen, a true copy of the same.

HENRY W. CARTER.

September 27th, 1848.

Sworn to and subscribed before me an acting Justice of the Peace, in and for the County of Lafayette and State of Arkansas, the day and year above written.

JOHN WAGGONER,
J P.

(*Justices Fee* 25.)

STATE OF ARKANSAS, *Lafayette County.*

IN LAFAYETTE CIRCUIT COURT,

On the Chancery side thereof, January Term, A. D. 1848.

WILLIAM WYNN, Plaintiff,
vs.
JOSIAH GARLAND, Defendant. } In Chancery.

At this day came said parties by their solicitors, and on motion it is ruled and ordered that they have, and leave is hereby granted unto them, to take the depositions of witnesses generally before any judge or justice of the peace of any of the States of the United States or Territories thereof to read in evidence on the final hearing of this cause, and that commissions issue for that purpose. A true copy from the record.

Attest,

J. D. JONES,
Clerk.

By SIDNEY MARTIN,
D. C.

To any Judge or Justice of the Peace of any of the United States or Territories thereof, greeting:

WILLIAM WYNN,
vs.
JOSIAH GARLAND.

Know ye, that we reposing confidence in your prudence and fidelity, do by these presents, give you authority diligently to examine witnesses whatever that the said William Wynn may bring before you in a certain suit now pending in our Circuit Court, in and for the said County of Lafayette, and on the Chancery side thereof, in which William Wynn is complainant, and Josiah Garland is defendant.

Therefore we desire you that at certain times and places by you to be appointed for that purpose you cause the witnesses to come before you, and then you there and then examine them separate and apart upon their corporal oaths first taken before you upon the Holy Evangelists. That you reduce their examination to writing, and when you shall so have taken them, that you send the same with this commission closed up under your seal to us in our said Circuit Court, at the town of Louisville, in the County aforesaid, without delay.

[SEAL.] In testimony whereof I have hereunto set my hand as Clerk and officer the seal of said Court at office, in Louisville, the 23d day of September, A. D., 1848.

J. D. JONES,
Clerk.

By SIDNEY MARTIN,
D. C.

Depositions of witnesses taken and subscribed before me, John Waggoner, an acting and duly commissioned Justice of the Peace, for the Comnty of Lafayette, in the State of Arkansas, duly qualified as such on the 9th day of October, A. D., 1848, between the hours of 8 o'clock in the morning and 6 o'clock in the evening of said day, at the tavern house of Thomas Brooks, Esq., in the town of Louisville, in the County and State aforesaid, in pursuance of a commission hereto annexed to be read in evidence in a certain cause now pending in the Circuit Court of the County of Lafayette, in the State aforesaid, wherein William Wynn is complainant and Josiah Garland is defendant, on the part of the complainant.

Thomas H. Edwards, a witness know to me to be of lawful age, being to me produced and being by me first duly sworn, to testify the truth, the whole truth, and nothing but the truth, touching the matters in controversy between the parties aforesaid, did on his oath depose and make answer to the interrogatories herein as follows:

Question. What is your age and your place of residence?

Answer. I was forty-one years of age the 15th day of last May. My residence is in Fisher's prairie, in the County of Lafayette, on the farm of Col. Wynn, and in the State of Arkansas.

Question. You say that your residence is in Lafayette county, state how long you have resided in said county, with whom have you resided, and what you have followed?

Answer. I have been in Lafayette county since the 15th November, 1842. I resided in Fisher's Prairie, and was the overseer of the defendant from the 15th of November, 1842, until the first of the year 1845. I then went to Lost Prairie and overseed for Col. Hamilton in 1845. I then overseed for Maj. Paup, from the — March, 1846, until August, 1846. I went to live with the complainant the 1st of January, 1847, and have been with him ever since.

Question. You say you lived with the defendont from the 15th November, 1842, to the first of the year 1845, please state if you know anything about the line dividing the N. W. ¼ of section 17, T. 16, R. 25 west from the N. E. ¼ of section 18, in the Township and Range aforesaid, or if you know anything about any stake, stone, corner post, either natural or artificial, please state it.

Answer. I know where the quarter sections lie above referred to. I have seen the North and South lines dividing the two quarter sections aforesaid, run by James P. Jett twice, and James S. Conway twice, and all at different times. I saw a stob in 1842, 1843, & 1844, that was said to have been put there by Charles E. Moore, the man who surveyed the land.

Question. You say you saw a stake which was said to have been put there by the surveyor, please state who pointed out the stake to you, who told you the surveyor had put it there, when were you told so, and where was the stake, and what stake was it said to be?

Answer. Col. Garland, defendant, pointed it out to me. Col. Garland told me the surveyor had put it there? was told so in the last of the month of January, 1843, or the first of February, just before the land sales at Washington, in the state of Arkansas. It was the half mile stake between the quarter sections aforesaid. Said stake was some sixty or seventy yards east, and near fifty yards north of the place where I saw Jett put a stake when they made the survey aforesaid.

Question. You speak of having been referred to a stake by the defendant at the time aforesaid, state whether that stake was in the woods, in open prairie, or in cultivated ground?

Answer. The stake was in an open prairie, but cultivated land inside of the defendants field. It had been planted in corn.

Question. You speak of having seen the surveys made by Jett and Conway, please state in what year or years those surveys were made?

Answer. Mr. Jett's surveys were made in the year 1847, and Mr. Conway's in the year 1848.

Question. You say you have seen the surveys made by Jett and Conway, please look at paper marked Exhibit A., and point out by suitable letters or marks, how the north and south line, dividing the quarter sections aforesaid, as run by Jett and Conway, would begin and terminate, and whether said line passed through cultivated ground or terminated in cultivated ground.

Answer. I have examined paper marked Exhibit "A." Conway and Jett commenced running the line aforesaid, at letter A., and run through a lane running north and south to the half mile corner. Jett's line or survey terminated at letter B., in the lane, and Conway's line or survey, terminated about ten feet west of letter "B.," when Jett put his stake in the lane, there being a difference between Jett's and Conway's line, of only that number of feet. When Jett run the line, he put a stake at the half mile corner, but Conway put up no stake. The line did not run through any cultivated ground, but through an open lane.

Question. You say that letter "B," represents the place where Jett put the stake; by suitable dot, figure, or letter, made on said paper "A," how the stake would stand that was shown to you by the defendant shortly after you went to live with him.

Answer. I have already stated that the stake shown to me was sixty or seventy yards east, and fifty yards north of where I said Jett put a stake at letter B, as indicated on the plat.

Question. State if you know whether or not there was anything like an old fence, or hedge row, or turn row, or anything that indicated where a fence run near where the stake was that was shown you by the defendant.

Answer. There was no fence standing there when I went there, nearer than the horse lot. There was about four rows of cotton, some fifteen or twenty steps from the horse lot, running north and south, which grew larger than the rest, and I asked the defendant why it was larger than the rest, and he told me there had been an old fence there.

Question. You say that the defendant told you where the old fence stood, state how far the defendant's present fence, which runs on the west line of the north west qr. of sec. 17, in the township and range aforesaid, is from where he told you the old fence had been.

Answer. It is about one hundred and fifteen steps west of where the old fence stood.

Question. You say that the defendant showed you the stake at the half mile corner as you have already stated, state what passed between you and the defendant at that time, about said stake, or about the land sales, or about pre-emption claims, either at that time, or at any subsequent time.

Answer. He said nothing more than that he did not want me to let the negroes knock it down, and that he wanted me to keep a mound around it, so as it could not be knocked down. He said Roberts and others who had ovverseed there for him, defendant, had kept a mound around it, and cultivated the land around it. He said nothing more about pre-emptions than that he was going to have two proved up. He the, defendant, said he would prove up one pre-emption, and got Samuel Hemphill to prove up the other, his son proved up one also.

Question. State when or where this conversation took place and who was present besides yourself and defendant, if any person, and what else passed if anything between you in relation to pre-emptions, or state claims.

Answer. There was no person else present. This conversation took place a short time before the land sales in Washington, in 1843, nothing else in relation to pre-emptions, or state claims, passed between us at that time.

Question. Whether or not did the defendant ever make any propositions to you to prove up pre-emptions, and if so on what lands, and state as fully as you can, all you have heard him say on the subject of proving up pre-emptions, and what he intended to do upon that subject.

Answer. He, defendant, never made any propositions to me to

prove up pre-emption in his life. I had not been in the state long enough to hold a pre-emption. He said Col. Wynn was proving up lands on him, and he intended to prove lands on Col. Wynn, so as to balance. He said if Col. Wynn would not prove up lands on him, he would not prove up any on Col. Wynn.

Question. Did the defendant ever propose to you or others to unite with him in buying up and establishing pre-emptions and State claims in Fisher's prairie, and what was the conversation, if any, upon that subject, and what was the purposes be stated to you, if any, in regard to securing and locating the whole of the prairie, or any part of it?

Answer. I before stated he never proposed to me to prove up pre-emptions. He never asked me to aid him in proving up a pre emption. He told me when to build a house with his negroes on a piece of land to hold a pre-emption. Col. Garland once told me and James H. Hurs that if we would unite with him, we could hold the whole of Fisher's prairie. I built one house for him, and one for his son to hold pre-emptions.

Question. You speak of Fisher's prairie; state whether the qr. sections aforesaid are in Fisher's prairie?

Answer. Parts of both of said sections are in Fisher's prairie, and parts of both are not.

Question. State as near as you can the time when the proposition was made to yourself and said Hurs?

Answer. It was a short time before the land sales before referred to.

Question. You state that you saw the lines run between the qr. sections aforesaid by Jett and company. State if you can, whether one Samuel Hemphill was present at either time, and whether he made any statements about his having cultivated, at any time, the N. E. ¼ of sec. 18 aforesaid or any portion thereof and all that he said in regard to any improvement he had made east or west of the line run by Jett and all that he did say upon that occasion.

Answer. The last time Jett run it, Samuel Hemphill was present. He said he did not ever cultivate any lands west of that line, or made any improvements; he said this in the positive; he pointed out where he said the old road used to run; he said his improvement did not come to the line run by Jett by about one hundred and twenty or thirty yards. He said he never had any claim on the N. E. quarter aforesaid,, and that it was Massach Janes' claim. He said he nevdr had any improvement on it, and never cultivated it.

Question. State if any other persons were present at the time said Samuel Hemphill was there.

Answer. Col. Wynn, Andrew Hemphill, James Jett, James Mc Laughlin, Judge Heightower, and myself were present.

Question. When you speak of Col. Garland, whether or not do you mean Josiah Garland the defendant?

Answer. I do.

(*Cross-Examined by Defendant.*)

Question. You state that you sure the half-mile stake between sections 17 and 18 while you lived with Garland. Do you know what became of said stake, was it there when you left Garlands or not, and was it not my request that the stake should remain.

Answer. It was his request when I first went there that the stake should remain there, and it was there when I left there.

Question. Was not said stake at that time in Garland's corn fields when you went to live with him, and in his cotton field when you left?

Answer. It was.

Question. Has not that field around said half mile stake been greatly changed and altered since you lived with Garland?

Answer. The fence has been moved since. There has been one fence made there and one moved, and two ditches cut.

Question. Was not said half mile stake as shown by said Conway and Jett in Garland's field and cultivated land? When you lived with him was said land cultivated all round east, west, north and south?

Answer. I cultivated all round said stake.

Question. When living with Garland, did you not understand that there was an agreed line between his farm and Col Wynn's and was not that line west of the half mile stake and if so, how far?

Answer. By nobody but Col. Garland himself. He told me there was. The agreed line that Col. Garland told me is about two hundred yards west of the stake showed me by Jett and Conway.

Question. You state you have for some time been living with Col. Wynn on a plantation adjoining Col. Garland's in Fisher's prairie. Do you not now, as the overseer of Col. Wynn, cultivate the same land on the N. E. quarter of section 18 in Fisher's prairie that you cultivated for Garland when you lived with him as his overseer?

Answer. I cultivated about fourteen or fifteen acres of the same land.

Question. You say that you have seen the said line run three times, who were the chain bearers at each time the line was run?

Answer. I don't know that I can tell all. John Waggoner and James Jett carried the chain when Conway run the line. I don't recollect who carried the chain when Jett run the line.

Question. Was Andrew or Sam. Hemphill one or both present at the running those lines and assisting?

Answer. They were both there at the time it was run, once by Jett, and Andrew was there both times when Jett run it.

Question. How far in said Fisher's prairie is said half mile stake from the timbered land?

Answer. I object answering the question unless I had measured the distance.

Question. Do you know under what act of Congress Garland proved up said pre-emption in the name of Samuel Hemphill?

Answer. I don't know anything more than what I have heard; from my own knowledge, I don't know.

Question. When living with Garland did he not tell you that he was entitled to a pre-emption by purchase, from both Samuel and Andrew Hemphill?

Answer. He told me that when he bought their improvement in Fisher's Prairie, that if they were entitled to a pre-emption, they would prove it up for him

Question. While living with Garland did he not at all times say to you, that he was willing for the old agreed line between himself and Col. Wynn, still to remain the line between them—and in proving up their old pre-emptions, was he not willing to divide the same, and let the old line remain the line between them.

Answer. The line that Garland told me was the agreed line, he said he was willing for that to run straight out and be the line, I do not know whether in proving up these pre-emptions he was willing to divide the same or not.

Question. You state you made an improvement for Garland and one for his son to hold pre-emptions, state what quarter sections those improvements were made on.

Answer. I don't know what quarter sections.

Question. Can you read common hand writing or print, or can you write your own name?

Answer. I can read print but I cannot read writing, or I cannot write my name.

his
THOMAS ⋈ EDWARDS.
mark.

Sworn to and subscribed before me, John Waggoner, 9th day of October, A. D., 1848.

JOHN WAGGONER,
J. P.

And at the same time and place also appeared before me, Jacob Waggoner, to me well known, and being by me first duly sworn to testify the truth, the whole truth and nothing but the truth, touching the matters in controversy between the parties aforesaid, did on his oath depose and say:

Question. Were you ever examined in this case. If so, when?
Answer. I have been examined before in this cause, I was

examined some time in the year A. D., 1847, I think in the Summer.

Question. State if you can, if you were in company with the defendant Garland, a day or two before you were examined, if so, where were you and he, where were you going and how long did you remain together, and what passed between you whilst you were together?

Answer. The day before I was examined, I was in company with said def't., I fell in company with him at his house, near Lewisville. He came to my house the day preceding my going to his house, to hire me to go over first to look at the lines between the quarter sections herein before referred to, I refused to go with him. He then told me he would give me $5, in gold if I would go with him just to look, I consented to go. I went to defendant's house the next day. We then went over the river, defendant had a compass with him, Mr. Gift was in company. We went to Fisher's Prairie, and were then running the lines most all day. In the evening late we came over the river, and came to a Mr. King's field there we separated, when I bid the defendant good by. He told Mr. Gift to ride on, and he defendant rode along with me some ten or fifteen steps, then rode up to me and caught me by the shoulder, and remarked to me in these words: "Old man come to my house, I have money plenty—come and get whenever you want it." I turned and left him, I did not speak to him till the day after, when I met him at the cut-off.

Question. Was not this before you went to see the lines run by James P. Jett. If so, how long?

Answer. It was the day before I saw the lines run by James P. Jett.

Question. The day yourself, defendant, and Mr. Gift were on the lands in controversy, did you or not express your opinion, as to whether the N. E. ¼ of sec. 18, in T. 16, of R. 25 W. had been cultivated by said Hemphill in 1829, or did you not refuse giving any opinion until Jett had run the lines in your presence?

Answer. I would not give any opinion about it until I saw Jett run the lines, for I was not positive.

Question. Had the defendant ever offered to assist you before in a pecuniary point of view?

The defendant never offered to assist me in a pecuniary or in any other way, before that time, he has never done it since.

Question. You say the defendant offered to give you money. State if you had intimated to him your desire to have money or that you needed his aid, and did the complainant know it until after you had given your testimony?

Answer. I never stated to him that I needed money, nor did I ever apply to him for aid. I merely reminded him once of a present he promised me, but he did not give it to me; I did not say anything to him about the present until after he had offered to give

me money. I did not tell this to any person until I had given my testimony.

his
JACOB ⋈ WAGGONER,
mark.

Sworn to and subscribed before me. }
this 9th day of October, A. D., 1848. }

JOHN WAGGONER,
J. P.

The complainant and defendant objected to the questions proposed by each other, and reserved their exceptions for the Circuit Court.

Attest, JOHN WAGGONER,
J. P.

By consent, the cross-examination of Thomas H. Edwards and the cross-examination of Jacob Waggoner, resumed with the liberty to examine both or each one of them in regard to all and every matter that the said defendant is legally entitled to cross-examine.

(*To Thomas H. Edwards, on cross-examination.*)

Question. You stated that the said Garland said to you that he and Hurs and yourself could hold the whole of Fisher's prairie by uniting, please state whether the said Garland said to you that the complainant was greatly involved in debt, and his interest could be bought at a reduced price.

Answer. As to complainant's being involved, I know nothing about it. His circumstances were not known. He never named anything about complainant's circumstances before that time, only in the State of Tennessee, and not at that time.

Question. While living with the defendant, did he ever propose to you, or any person else, within your knowledge, to cheat, wrong, or defraud complainant out of any of his pre-emptions.

Answer. All the proposition he ever made to me, was the proposition he made to me and James H. Hurs, as herein before stated, you can make what you please of that.

The hour of six o'clock in the evening having arrived, on motion, and by consent of parties, the further taking of depositions in the cause, is adjourned until to-morrow morning, eight o'clock.

Attest, JOHN WAGGONER,
J. P.

Tuesday morning, October 10th, 1848, neither party appearing, and there being no further depositions or witnesses offered, the same are closed.

Attest, JOHN WAGGONER,
J. P.

STATE OF ARKANSAS, *County of Lafayette.*

I, John Waggoner, an acting and duly commissioned Justice of the peace, in and for the County of Lafayette, in the State of Arkansas, do hereby certify and make known, that the foregoing depositions of Thomas H. Edwards and Jacob Waggoner were taken before me on the 9th day of October, A. D. 1848, between the hours and at the place in the caption hereof above mentioned; that the examination, responses, and statements of each of said deponents were reduced to writing in my presence, and the said deponents respectfully sworn to and subscribed in my presence, at the time and place aforesaid, and that said deponents are residents of the county of Lafayette, in the State of Arkansas.

In testimony whereof, I John Waggoner, Justice of the Peace, do hereunto set my hand, at the tavern house, in the town of Lewisville, in the State of Arkansas, this 10th day of October, A. D. 1848.

JOHN WAGGONER,
J. P.

Justice fees,	$2.50
Witnesses, Thos. H. Edwards, 1 day,	1.00
" Jacob Waggoner, 2 days,	2.00
Total of fees,	$5.20

(*For plat see Original page* 198.)

(*For plat see Original page* 199.)

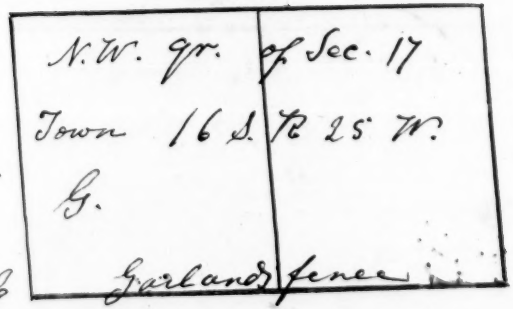
Explanations of the map or plat.

A to B, the north and south line, dividing qr. sections 17 and 18 S. 16 of R. 25 W, run by J. Jett and James S. Conway. C. D. the west line of fence, of J. Garland's fence in Fisher's prairie, run north to south. E. F. the east line of fence, of Wynn's farm in same prairie, running north and south, or nearly so. G. Garland's farm, or a part of same, being N. W. ¼ of sec. 17 S. 16 R.

198. Garland v Wynn No 179—

Wy. 72. L. 120.

East

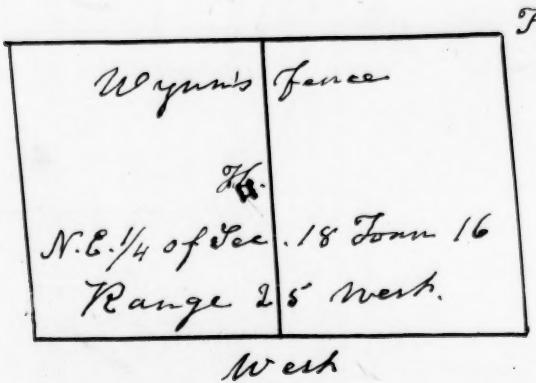


A. B. one half mile B.

South, South,

199-

Garland vs Wynn No. 179.



North

No. 7 — 120.

25. H. Wynn's farm, or part of the same, being N. E. ¼ of sec. 18 S. 16 of R. 25.

This is paper referred to by Thos. H. Edwards, in his testimony, as Exhibit "A."

Attest, JOHN WAGGONER,
J. P.

Opened and published by order of Court, April 30, 1849.

A. BYRNE,
Clerk.

Depositions notice and commission on part complainant, taken before Lewis Allen, J. P., on the 23d and 24th days of October, 1849, appear in words and figures following, to wit:

JOSIAH GARLAND, ESQR.

Take notice that I will attend at the office of John Feld, Esq., at the town of Washington, in the County of Hempstead, in the State of Arkansas, on the 23d day of the present month, and will then and there, between 8 o'clock in the morning and 6 o'clock in the evening of said day, take the depositions of witnesses, to be read in evidence on my behalf on the trial of a certain cause now pending in the circuit of Lafayette county, in the state aforesaid, on the chancery side thereof, wherein I am complainant, and you are defendant, and I will continue taking said depositions from day to day till all are taken.

WILLIAM WYNN.

Lafayette Co., Ark., Oct. 17th 1848.

BY PIKE, COCKE, AND FIELD,
His Solicitors.

STATE OF ARKANSAS, *County of Lafayette.*

The service of said notice appears, endorsed thereon, in words and figures following, to wit:

On this 18th day of October, A. D. 1848, personally appeared before me the undersigned, an acting Justice of the peace, for the county aforesaid, John J. French, Esq., who being first duly sworn states on oath, that he executed the within and foregoing notice on Josiah Garland, by delivering him a true copy thereof, at his residence in the county and state aforesaid, on the 18th day of October, A. D. 1848.

JOHN J. FRENCH,
Constable.

Sworn to and subscribed before me this 21st day of October, 1848.

JOHN WAGGONER,
J. P.

Interest fees, 25 cents.

STATE OF ARKANSAS, *County of Lafayette.*

In Lafayette circuit Court, on the Chancery side thereof, January term, A. D. 1848.

WILLIAM WYNN, Complainant,
vs.
JOSIAH GARLAND, Defendant.

At this day came said parties by their solicitors and on motion it is ruled and ordered that they have and leave is hereby granted unto each of them to take the depositions of witnesses generally before any Judge or Justice of the Peace of any of the States of the United States or Territories thereof, to be read in evidence on the final hearing of this cause, and that commissions for that purpose.

A true copy from the record.
Attest,

J. D. JONES,
Clerk.

By SIDNEY MARTIN,
D. C.

To any Judge or Justice of the Peace of any State of the United States or Territories thereof, greeting:

WILLIAM WYNN,
vs.
JOSIAH GARLAND.

Know ye that we reposing confidence in your prudence and fidelity, do by these presents give you authority diligently to examine all witnesses whatever that the said William Wynn may bring before you, in a certain suit now pending in our Circuit Court, in and for the County of Lafayette, and on the chancery side thereof, in which William Wynn is complainant, and Josiah Garland is defendant.

Therefore we desire you that at certain times and places, by you to be appointed for that purpose, you cause the witnesses to come before you and that you then and there examine separate and apart upon their corporal oaths first taken before you upon the Holy Evangelists. That you reduce their examinations to writing, and

when you shall so have taken them that you send the same with this commission closed up under your seal to us in our said Circuit Court at the town of Louisville, in the County of Lafayette, without delay.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at office, in Louisville, this — day of October, A. D., 1848.

[SEAL.]

J. D. JONES,
Clerk.

By SIDNEY MARTIN.
D. C.

The execution of this commission appears by reference to the schedule hereunto annexed.

Attest,

LEWIS ALLEN,
J. P.

Depositions of witnesses taken and subscribed before me, Lewis Allen, Esq., an acting Justice of the Peace, for the County of Hempstead, in the State of Arkansas, duly commissioned and qualified as such on the 23d day of October, A. D., 1848, between the hours of 8 o'clock in the morning and 6 o'clock in the evening of said day at the office of John Field, in the town of Washington, in the County and State aforesaid, in pursuance of a commission hereto annexed and to be read as evidence on the trial of a certain cause now pending in the Circuit Court of Lafayette county, in the State of Arkansas, on the Chancery side thereof, wherein William Wynn is complainant, and Josiah Garland is defendant, on the part of the complainant.

Charles E. Moore, a witness to me well known to be of lawful age, and being by me first duly sworn, to testify the truth, the whole truth and nothing but the truth, touching the matters in controversy between the parties aforesaid, did on his oath depose and say :

Question. What is your age and place of residence?

Answer. I am about thirty-two years of age, and live in Pulaski county, Arkansas, and have resided there about ten years.

Question. What has been your principal avocation since you have resided in the State of Arkansas ?

Answer. About six months in each year I have been engaged in surveying within the last ten or twelve years.

Question. Did you mostly survey for individuals or for the General Government of the United States, and if so, by whom was the survey made ; by the United States survey or in that portion

Sworn to and subscribed before me this 21st day of October, 1848.

JOHN WAGGONER,
J. P.

Interest fees, 25 cents.

STATE OF ARKANSAS, *County of Lafayette.*

In Lafayette circuit Court, on the Chancery side thereof, January term, A. D. 1848.

WILLIAM WYNN, Complainant,
vs.
JOSIAH GARLAND, Defendant.

At this day came said parties by their solicitors and on motion it is ruled and ordered that they have and leave is hereby granted unto each of them to take the depositions of witnesses generally before any Judge or Justice of the Peace of any of the States of the United States or Territories thereof, to be read in evidence on the final hearing of this cause, and that commissions for that purpose.

A true copy from the record.
Attest,

J. D. JONES,
Clerk.

By SIDNEY MARTIN,
D. C.

To any Judge or Justice of the Peace of any State of the United States or Territories thereof, greeting:

WILLIAM WYNN,
vs.
JOSIAH GARLAND.

Know ye that we reposing confidence in your prudence and fidelity, do by these presents give you authority diligently to examine all witnesses whatever that the said William Wynn may bring before you, in a certain suit now pending in our Circuit Court, in and for the County of Lafayette, and on the chancery side thereof, in which William Wynn is complainant, and Josiah Garland is defendant.

Therefore we desire you that at certain times and places, by you to be appointed for that purpose, you cause the witnesses to come before you and that you then and there examine separate and apart upon their corporal oaths first taken before you upon the Holy Evangelists. That you reduce their examinations to writing, and

when you shall so have taken them that you send the same with this commission closed up under your seal to us in our said Circuit Court at the town of Louisville, in the County of Lafayette, without delay.

[SEAL.]

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at office, in Louisville, this — day of October, A. D., 1848.

J. D. JONES,
Clerk.

By SIDNEY MARTIN.
D. C.

The execution of this commission appears by reference to the schedule hereunto annexed.

Attest,

LEWIS ALLEN,
J. P.

Depositions of witnesses taken and subscribed before me, Lewis Allen, Esq., an acting Justice of the Peace, for the County of Hempstead, in the State of Arkansas, duly commissioned and qualified as such on the 23d day of October, A. D., 1848, between the hours of 8 o'clock in the morning and 6 o'clock in the evening of said day at the office of John Field, in the town of Washington, in the County and State aforesaid, in pursuance of a commission hereto annexed and to be read as evidence on the trial of a certain cause now pending in the Circuit Court of Lafayette county, in the State of Arkansas, on the Chancery side thereof, wherein William Wynn is complainant, and Josiah Garland is defendant, on the part of the complainant.

Charles E. Moore, a witness to me well known to be of lawful age, and being by me first duly sworn, to testify the truth, the whole truth and nothing but the truth, touching the matters in controversy between the parties aforesaid, did on his oath depose and say :

Question. What is your age and place of residence ?

Answer. I am about thirty-two years of age, and live in Pulaski county, Arkansas, and have resided there about ten years.

Question. What has been your principal avocation since you have resided in the State of Arkansas ?

Answer. About six months in each year I have been engaged in surveying within the last ten or twelve years.

Question. Did you mostly survey for individuals or for the General Government of the United States, and if so, by whom was the survey made ; by the United States survey or in that portion

bordering upon Red River, commonly known and designated as Fisher's prairie, in the County of Lafayette, and the State of Arkansas.

Answer. I surveyed the fractional township from the mouth of Little River to the Choctaw boundary, with the exception of one or two fractions, which may have been made by some one else, this I did in 1837 and 1838. In the year 1840 I commenced surveying as United States surveyor. In the year 1841 I surveyed all of Fisher's prairie, said prairie lying on the south side of Red River, in the County of Lafayette, Arkansas.

Question. Have you or have you not, since the original survey, re-surveyed any portion of Fisher's prairie, and if so, state as near as you can when that re-survey was made, and what parts of it.

Answer. I have re-surveyed it at the request of the complainant on the 21st day of October, 1848. I run the north and south line between sections 17 and 18 T. 16, S. of R. 25 west, south of Red River.

Question. State at what corner you commenced running the line; was it prairie wood or cultivated ground through which it run, and whether the said line run through fields or lanes, and describe as accurately as you can the course and direction of said line with reference to any artificial or natural objects?

Answer. I commenced at the corner of section 17 and 18 in said township, and ran due south; first five hundred yards was through woodland, and the remainder through prairie. When the line entered the prairie it entered a lane on the east side thereof, between the plantations of said complainant and defendant; the line parallel with the fence on the east side of the lane, and within a few feet thereof. The fence is a worm fence, and the extreme western corner of the fence was within a few feet of the line, and very near parallel to the line. On the west side of the lane is a cultivated plantation; belongs to said complainant, and on the east side of said lane a cultivated plantation owned by defendant. The lane is some eighteen or twenty feet wide.

Question. Was there any stake or stob stuck up upon the north and south line run by you as aforesaid, and if so, state how far that stake or stop was to the east or west of the north and south line run by yourself?

Answer. There was a meg or stake at some fifteen or eighteen inches west of the line run by myself, and sixteen feet and one half south of the point, for fourth section corner on said line between section 17 and 18.

Qnestion. State how far the meg or stake put up by yourself at fourth section corner in your answer above referred to, and the sneg or stake found by you thereon was from the fence referred to on the east side of the lane, and what would better position of said

stake so found, in reference to a direct line from the corner you started from in running the north and south line between the sections aforesaid?

Answer. The posts were established by myself at fourth section corner was very near on a line with western corner of said fence and the stake found aforesaid was some fifteen or eighteen inches further west.

Question. From the time you entered the lane aforesaid to the point where you drove the stake at fourth section corner, how near did the line run in the whole distance of the fence on the east side of said line?

Answer. Very near, from one to three feet west of the fence on the east side.

Question. State if you know by whom the survey was made, under the authority of the United States Government, when the corner between sections seven, eight, seventeen and eighteen was made?

Answer. I made the survey and established the corner.

Question. Did you or did you not, when the survey as aforesaid was made by you as United States Surveyor put up or cause to be put up a stake or any other mark denoting the half mile measurement from said corner, and forming the corner of the N. E. ¼ section 18, and the N. W. ¼ sec. 17, and the township and range aforesaid, and if so, state whether the stake set by you upon the survey recently made by you as aforesaid would not be with reference to a north and south line be as near as might be upon the same line, and whether you saw the old stake set by you in 1841 upon said line or anywhere else?

Answer. I did put up or set a post as corner to the N. E. quarter of section eighteen, and N. W. quarter of section seventeen, the new corner established is exactly at the point where the first and former one stood, or as near as can be determined by myself. I saw nothing whatever of the old corner post.

Question. State whether the stake originally set up by you as United States Surveyor or upon north and south line aforesaid and at the point aforesaid was in the wood land, uncultivated prairie or in cultivated land.

Answer. It was not not in woodland but in prairie but whether the cultivated or not, I do not recollect. It was inside of the defendant's then enclosure. I think there was new or uncultivated prairie within said enclosure, but whether the exact point where the original corner was established was cultivated or not, I do not recollect.

Question. Who was present when you run the line for complainnal ant in the present year as you have stated?

Answer. James Abraham, Joshua S. Howard, Thomas Edwards, Complainant and his two sons, John W. Cocke.

Question. Are you acquainted with Morgan Cryer, if so, did you see him on the day you run the line for the complainant, or at any time afterwards, if so, state what conversation passed between you

relative to the N. E. ¼ of sec. 18 township and range aforesaid? State all that passed between you on that occasion.

Answer. I am acquainted with Mr. Cryer, I did not see him on the day the survey was executed, but understood he was on Fisher's prairie on said day and examined the survey and line between sections 17 and 18 T. 16 S. R. 25 W. I saw Mr. Cryer on the following day. He informed me that he had seen the new corner and line as run on the day before. He expressed a doubt whether the cultivation of the prairie had extended on to the N. E. quarter of sec. 18 at an early day. That he saw no natural objects by which he could determine within sixty or a hundred yards, but that on the S. E. qr. of sec. 18 he could and did satisfy himself that the old Hemphill field did extend west of the north and south line between secs. 17 and 18. His proposition to determine was to ascertain the eastern limit of the old field, then the northern and southern limits, and then to agree as to the quantity, and then to measure west for said quantity and see if it would extend west of said line or on to the disputed qr. section. I proposed to go with him again to Fisher's prairie if he thought I would assist him in determining the fact in controversy better than any person with chains and pins. He did not say he would go back or that my assistance would be better than any persons, but still repeated it would be the best way to determine the fact whether the Hemphill field had extended on to the N. E. ¼ of sec. 18 previous to the year 1829.

Question. You say M. Cryer spoke of Hemphill's cultivation or field; are you positive he spoke of its size, locality and situation of it previous to 1829, or did he refer to that year?

Answer. He spoke of 1829 and previous, he expressed to no opinion as to quantity of acres, &c.

Question. You have said you surveyed the lands in Fisher's Prairie, in 1841, and have also made a re-survey of a portion thereof, as you have already stated in the present month. State what was the inclination of the needle at the different times you made the surveys?

Answer. I found the variation at the time of the late survey to be 8½° East; at the time of the original survey I do not recollect exactly. Very near the same, as I have never known a change of more than one degree within the ten years I have surveyed in Arkansas.

(*Cross-examined by Defendant.*)

Question. When you made the original survey on behalf the United—how did you designate the corner where the corners of section seven, eight, seventeen and eighteen meet?

Answer. By marking and numbering pin-trees and taking the distance and bearing to two of them, and by a stake at the true point.

Question. When you made the recent survey did you find the stake and corner-trees, and if so, had the stake been moved and the marks on the trees defaced or in any manner obliterated?

Answer. I found the trees, not the stake; the trees had not in any been defaced.

Question. When you made the original survey, did you establish a fourth section corner between secs. 17 and 18, and when you made the recent survey, did you establish a new corner at the same place?

Answer. I did, by barely setting a post, I did put in a stake as new corner, as near the proper point as I could determine.

Question. Did your recent survey correspond with the original survey made by you?

Answer. It did.

Question. What distance is allowed for imperfect measurement between prairie and timbered land?

Answer. None at all.

Question. At whose instance did Morgan Cryer come to see the survey made by you on the 21st inst., as above stated?

Answer. I do not know, but suppose at the instance of the complainant, as the complainant informed me he had requested Mr. Cryer to attend the survey?

Question. When you made the recent survey for complainant, had you been informed Morgan Cryer's deposition had been taken in this cause. If so, by whom were you so informed?

Answer. I had been informed that his affidavit had been taken in proving a pre-emption on the N. E. ¼ of sec. 18, T. 16 S., R. 25, and had not been informed as I understood of his deposition.

Question. At what place did you see Morgan Cryer, and hold the conversation with Mr. Cryer, above referred to?

Answer. At his own residence. Stopped there on my return from Fisher's Prairie to Washington.

Question. For what purpose did you call to see Mr. Cryer?

Answer. As he had come to Fisher's Prairie without seeing me or seeing the survey executed, I wished to say to him that the posts and megs he had seen on the East side of the line between the plaintiff's and defendant's plantation, were exactly on the line between sections seventeen and eighteen, T. 16, R. 25 West, as originally surveyed by me, and for no other purpose whatever.

Re-Examined by Complainant.

Question. You say you called to see Mr. Cryer, to inform him about the stakes you stuck up. Did he admit to you that he had seen the stakes you had so stuck up when you made the recent survey?

Answer. Yes.

Question. Who was present when you had the conversation with Mr. Cryer?

Answer. John W. Cocke, Esq., was present at the time.

CHAS. E. MOORE.

Sworn to, and subscribed before me, this 23d day of October, A. D., 1848.

LEWIS ALLEN,
J. P.

By consent of parties, the further examination of witnesses is adjourned till to-morrow morning, 8 o'clock.

LEWIS ALLEN,
J. P.

October 24th, A. D., 1848.

The further examination of witnesses in this case, being by consent continued until this day, and the said complainant and the said defendant by their attorney's having met pursuant to adjournment on yesterday, at the place in the caption hereof mentioned, John Waggoner, a witness produced in behalf of the complainant, was by me sworn, to testify the truth, the whole truth, and nothing else but the truth, in a certain matter in controversy, in the Lafayette Circuit Court on the Chancery side thereof, wherein William Wynn is complainant, and Josiah Garland is defendant.

Question 1st, by complainant. How old are you, and where do you reside?

Answer. I will be forty-five years old the 21st March, 1849, and reside in Lafayette County, Arkansas.

Question. How long have you resided in that County, and state also, whether you have any knowledge of the cultivated ground in Fisher's Prairie; how long have you been acquainted with said Prairie, if at all?

Answer. I have resided in what is now Lafayette County, ever since the year 1821. I have a knowledge of the cultivated ground in Fisher's Prairie, ever since the year 1822.

Question. State as near as you can, who were cultivating the ground or land in Fisher's prairie in 1828 and 1829.

Answer. Andrew Hemphill, Wm. Hemphill, Massach H. Janes and Morgan Cryer.

Question. State if you know anything of the N. E. $\frac{1}{4}$ of sec. 18 in T. 16 S. of R. 25 W. lying in said prairie, and if so, how long have you known it, and when was your attention first directed to it? State particularly, and also how long and by whom was it cultivated, if at all?

Answer. I do. I have known what is now the quarter section ever since 1822 John Cryer first resided on it and settled the place. He sold it to Massach H. Janes previous to the year 1828, Massach H. Janes sold it to Dr. Joseph Jones, and said Jones sold it to said complainant, and I do not recollect the year. Said complainant has cultivated it ever since to the present time.

Question. Were you or not, acquainted with Mrs. Hemphill, and her family, and if so, when did you become acquainted with them, and who constituted her family of children, and how long did she and family reside in said Fisher's prairie?

Answer. I was acquainted with Mrs. Hemphill and family. I made their acquaintance in about 1819, in Clark county, Arkansas. She and family resided in Fisher's prairie several years. She had the following named children, namely: Andrew Hemphill, Samuel Hemphill, Losson and James Hemphill.

Question. When Mrs. Hemphill resided in Fisher's prairie, was she a widow? If so did she reside separate and apart from her children above named, or did all or any of them live with her, if so, state who and which of them.

Answer. She was a widow when she resided in Fisher's prairie. All the the above named children lived with her in Fisher's prairie except Andrew.

Question. Had all or either of her children families when they resided with her in said prairie, if so, state.

Answer. None of the children had families except Andrew.

Question. Were you or not acquainted with Mrs. Hemphill in the years A. D., 1829 and 1830, and if so where did she and family reside in those years.

Answer. I was acquainted with them the years aforesaid; they resided in Fisher's prairie, Lafayette county, Arkansas.

Question. You say they resided in Fisher's prairie in 1829 and 1830; state whether Mrs. Hemphill and her children who lived with her, carrried on a farm together and who appeared to be the head of the family, and to control the affairs and business of herself and family; state all you know and your means of knowing.

Answer. They did live together in those years, and carried on a farm together in Fisher's prairie. Mrs. Hemphill appeared to be the head of the family; this I know from being at their house, and staying all night frequently, during those years.

Question. You say Mrs. Hemphill and her sons you have named, lived on a farm in Fisher's prairie in 1829 and 1830; state whether they had one or more farms, and on what section or quarter sections was their farm or farms, together with their improvements, in the years aforesaid.

Answer. They only had one farm at any time that I knew.—They swapped farms with Andrew Hemphill, but when, I do not now reccollect. I think the farm they cultivated in those years was embraced in the defendant's now present plantation.

Question. Who was present when you had the conversation with Mr. Cryer?

Answer. John W. Cocke, Esq., was present at the time.

CHAS. E. MOORE.

Sworn to, and subscribed before me, this 23d day of October, A. D., 1848.

LEWIS ALLEN,
J. P.

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The further examination of witnesses in this case, being by consent continued until this day, and the said complainant and the said defendant by their attorney's having met pursuant to adjournment on yesterday, at the place in the caption hereof mentioned, John Waggoner, a witness produced in behalf of the complainant, was by me sworn, to testify the truth, the whole truth, and nothing else but the truth, in a certain matter in controversy, in the Lafayette Circuit Court on the Chancery side thereof, wherein William Wynn is complainant, and Josiah Garland is defendant.

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Answer. I will be forty-five years old the 21st March, 1849, and reside in Lafayette County, Arkansas.

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Question. State as near as you can, who were cultivating the ground or land in Fisher's prairie in 1828 and 1829.

Answer. Andrew Hemphill, Wm. Hemphill, Massach H. Janes and Morgan Cryer.

Question. State if you know anything of the N. E. ¼ of sec. 18 in T. 16 S. of R. 25 W. lying in said prairie, and if so, how long have you known it, and when was your attention first directed to it? State particularly, and also how long and by whom was it cultivated, if at all?

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Question. Were you or not, acquainted with Mrs. Hemphill, and her family, and if so, when did you become acquainted with them, and who constituted her family of children, and how long did she and family reside in said Fisher's prairie?

Answer. I was acquainted with Mrs. Hemphill and family. I made their acquaintance in about 1819, in Clark county, Arkansas. She and family resided in Fisher's prairie several years. She had the following named children, namely: Andrew Hemphill, Samuel Hemphill, Losson and James Hemphill.

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Answer. She was a widow when she resided in Fisher's prairie. All the the above named children lived with her in Fisher's prairie except Andrew.

Question. Had all or either of her children families when they resided with her in said prairie, if so, state.

Answer. None of the children had families except Andrew.

Question. Were you or not acquainted with Mrs. Hemphill in the years A. D., 1829 and 1830, and if so where did she and family reside in those years.

Answer. I was acquainted with them the years aforesaid; they resided in Fisher's prairie, Lafayette county, Arkansas.

Question. You say they resided in Fisher's prairie in 1829 and 1830; state whether Mrs. Hemphill and her children who lived with her, carrried on a farm together and who appeared to be the head of the family, and to control the affairs and business of herself and family; state all you know and your means of knowing.

Answer. They did live together in those years, and carried on a farm together in Fisher's prairie. Mrs. Hemphill appeared to be the head of the family; this I know from being at their house, and staying all night frequently, during those years.

Question. You say Mrs. Hemphill and her sons you have named, lived on a farm in Fisher's prairie in 1829 and 1830; state whether they had one or more farms, and on what section or quarter sections was their farm or farms, together with their improvements, in the years aforesaid.

Answer. They only had one farm at any time that I knew.—They swapped farms with Andrew Hemphill, but when, I do not now reccollect. I think the farm they cultivated in those years was embraced in the defendant's now present plantation.

Question. State if you know, when Fisher's prairie and the land thereabouts were surveyed by the United States?

Answer. In the year 1840 or 1841.

Question. State if you have since that time seen a resurvey of any portion of said prairie, if so what portion, by whom and when surveyed, and who was present at the time or times you saw it done.

Answer. I have seen it resurveyed, by James P. Jett once, and by James S. Conway once. They run the line between sections 17 and 18 in T. 16, S. of R. 25 west. When Jett run the line, which was in August 1847, Andrew Hemphill, Simon L. Higgs, Thomas Edwards, Jacob Waggoner, William W. Wynn and Complainant and myself. John Field, James S. Conway run the same line in 1848. James P. Jett, Thomas Edwards, myself and complainant, Jesse Tealock, Hosea Baker, and others.

Question. You say you are, and have been for many years, acquainted with the N. E. ¼ of sec. 18, in township and range aforesaid; state if you can, whether Samuel Hemphill cultivated any portion of said quarter section in 1829, if you know that he did or did not, state all the means you have of knowing, and state particularly all about it.

Answer. I have been acquainted with the quarter section aforesaid ever since 1822. Samuel Hemphill did not cultivate said quarter section or any portion of it, neither year, 1829 or any other year, to my knowledge. I have been familiarly acquainted with Fisher's prairie in which said quarter section is situated since 1822. The strip of land between the improvements of Massach H. Janes, and Hemphills in 1829 and 1830, was uncultivated at that time.—The larger portion on the quarter section aforesaid, was timbered land. Between the two improvements aforesaid, this strip of timber land was since closed up by said defendant. The Hemphills never did cultivate any timber land in Fisher's prairie to my knowledge.

Question. State if any portion of the strip of timbered land you mentioned was embraced in N. W. ¼ of sec. 17 in the township and range aforesaid. If so state what portion of said quarter section did said strip of woodland embrace in 1829 and 1830.

Answer. The northern portion of the quarter aforesaid was embraced in the strip of woodland mentioned by me, and it extended to within some forty or fifty yards of a stake that was placed by James P. Jett, the locality of which stake is designated by letter B, on exhibit marked A, No. 1, and is the half mile corner between sections 17 and 18, aforesaid.

Question. You say you saw the lines run by between the two sections aforesaid by Jett and Conway. State how these surveys agreed, and how they were run, and whether said line run over wood land, raw prairie, or cultivated land, describe particularly all about it.

Answer. The said Conway and Jett commenced at the corner of

sections 7, 8, 17 & 18, they run due south through woodland near a quarter of a mile, after passing through the woods, they entered a lane, said line run along said lane, to the half mile corner, letter "B." Complainant owns and cultivates on the west side of the line, and the defendant on the east side. Jett's line run closest to said defendant's fence, touching the stakes. Conway's line run some 6 or 8 or 10 feet west of Jett's line. Conway run the line in a very wet and cloudy day. When Jett run the line, he struck a meg or stake, which was a foot or two west of the east fence. Conway struck no meg or stake. Jett run the line first, and stuck the meg or stake in 1847. I saw the meg or stake stuck of Jett, when Conway run the line, I was one of the chain carriers, when Jett and Conway both run the line, and was present when the stake or meg was stuck, the stake was stuck by Jett, and I am satisfied was at the time Conway surveyed at the same place Jett stuck it.

Question. You state that the strip of woodland mentioned by you herein, reached within forty or fifty yards in the year 1829 & 1830, of the stake stuck by Jett, as you have stated, now state how near the improvement on which Mrs. Hemphill, Samuel Hemphill, and others resided, in 1829 & 1830, came to the stake so planted by Jett.

Answer. I think it did not come nearer than forty or fifty yards.

Question. State if you were on the north east quarter in the section aforesaid, or on any of the adjoining quarters at any time, and if so, did you discover by any means whatever, where the west string of the fence of Mrs. Hemphill in 1829 run, state fully, all you know about it, and state whether that old fence line touched any portion of the north east quarter of sec. 18, in township and range aforesaid.

Answer. I have been on the quarter section a great many times, I could not tell where the old fence run, but from the knowledge I had of the Hemphill farm, it did not extend between, to the north and south line of section 17 and 18, in the township and range aforesaid, by some thirty or forty yards.

Question. State who resided, in 1829 and 1830, upon the north east quarter aforesaid, and what was the extent of the cultivation and improvement upon said quarter in those years, and by whom made.

Answer. Massach H. Janes resided upon that quarter in the years 1829 and 1830. There was right smart building, and some forty or fifty acres of cultivated land, the building was occupied by Massach H. Janes and his family, and land also cultivated by said Janes.

Cross Examined by Defendant :

Question. How far did you reside from the land in Fisher's prairie, where the Hemphill's resided in 1829.

Answer. I resided in Chickiminna prairie some eight or ten miles.

Question. How far did you reside, in 1841, from the land where the Hemphill's resided in 1829.

Answer. About twelve or thirteen miles.

Question. How long after the lands in Fisher's prairie was surveyed before you examined the lines and corners, as to the N. E. ¼ of Sec. 18, T. 18, S. R. 25 West.

Answer. I examined the lines and corners, in relation to said qr. section, for the first time, in August, 1847.

Question. Do you know Jacob Waggoner and Morgan Cryer, of Lafayette county? If so, what is their general character, as good citizens and honest men?

Answer. I know them both. They are both men of good character.

Question. Have you ever examined the corner where sections 7, 8, 17 and 18 meet at other times than when the surveys were made by Jett and Conway spoken of, you above.

Answer. I have not.

Question. Has not a great change taken place in Fisher's prairie, since 1829 and 1830, and more particularly, since 1840, by the improvements, change of farms, and opening plantations?

Answer. There has been a considerable change since 1829 & 1830, up to 1840, and from 1840 up to the present time there has been a greater change.

Question. In 1829 and 1830 what was the distance from the enclosure of Hemphill's improvement, to the inclosure of Massach H. Janes' improvement?

Answer. I cannot say distinctly, but should judge the distance was some four hundred yards.

Question. What direction from the Hemphill houses to Massach H. Janes' house or houses?

Answer. A little north of west.

Question. Can you state whether the well at the Hemphill house used in 1829 and 1830, has been filled up or is now open?

Answer. I cannot state.

Question. Please state the distance from the Hemphill house, in 1829, to Massach H. Janes' house?

Answer. I cannot tell the distance exactly, but it was something like three quarters or a mile.

Question. Do you know anything of the conditional line agreed upon by those persons owning and possessing the same and Massach H. Janes?

Answer. I do not know anything of it of my own knowledge but have heard it spoken of since these parties got into law about it.

Question. At whose instance did you go and attend the surveys made by Jett and Conway?

Answer. At the request of the complainant.

Question. Are you acquainted with and can you take the numbers of land?

Answer. I am, and can take numbers when they are marked plain.

And further this deponent saith not.

JOHN WAGGONER.

Sworn to and subscribed before me, this 29th day of October, A. D. 1848.

LEWIS ALLEN,
J. P.

And at the same time and place also appeared before me James P. Jett, a witness to me well known, and being by me first duly sworn to testify the truth, the whole truth and nothing but the truth touching the matters in controversy between the parties aforesaid, did on his oath depose and say:

Question. Have you ever been examined in behalf of either of the parties aforesaid; if so, when were you examined and how often?

Answer. I have been examined twice in behalf of complainant, and at the cut off on Red river in the year 1847, and once at Fulton, in Hempstead county, about the month of June, 1848.

Question. Are you acquainted with Samuel Hemphill? If so, where is he now?

Answer. I was acquainted with him, and I am informed, believe he is now dead; he died, I believe, about the 1st of Sept., 1848.

Question. You say Hemphill is dead, did you at any time hear him in his lifetime say anything about having cultivated, improved, or lived on in the year 1829 or 1830 the N. E. ¼ of sec. 18 in T. 16 S. of R. 25 W? If so, state when and where and on what occasion you heard him so speak, and state all he did say?

Answer. I run the line once with compass and chain between sections 17 and 18, in the township and range aforesaid, in the presence of the said Samuel Hemphill, when he saw where the line run he expressed himself perfectly satisfied on the subject. I did not pay sufficient attention to all he said to recollect any particular language of his in relation to his being on said land in the year 1829 or 1830, my recollection is from said Hemphill's conversation with others present.

JAMES P. JETT, *J. P.*

Sworn to and subscribed before me this 24th day of October, A. D., 1848.

STATE OF ARKANSAS, *County of Hempstead.*

I, Lewis Allen, an acting Justice of the Peace, in and for the County of Hempstead, in the State of Arkansas, do hereby certify and make known that the foregoing depositions of Charles E. Moore, John Waggoner and James P. Jett, were taken before me on the 23d and 24th days of October, A. D., 1848, between the hours and at the place in the caption hereof above mentioned, that the examination, responses and statements of each of said deponents respectfully, sworn to and subscribed in my presence, at the time and place aforesaid, and that the said deponents are residents of the Territories of Pulaski, Lafayette and Hempstead in the State of Arkansas.

In testimony whereof I, Lewis Allen, a Justice of the Peace, do hereunto set my hand at the law office of John Field, in the State of Arkansas, this 24th day of October, A. D., 1848.

LEWIS ALLEN,
J. P.

Tax of Fees:

To John Waggoner, as a witness 3 days, $1,00, -	$3,00
do 18 miles travel, 5, -	3,40
	$6,40
	7,53¼
	$13,93¼

LEWIS ALLEN,
J. P.

For swearing 3 witnesses, 6¼ - - - -	18¾
For 7,100 words, 10, - - - - -	7,10
For certificate, 25, - - - - -	25
	7,53¼

Test, LEWIS ALLEN,
J. P.

224- Garland to Wynn - No: 179

(*For plat see Original page* 224.)

This paper is exhibited A No. 1 referred by John Waggoner in his deposition.

Attest,

JOHN WAGGONER,

Attest,

LEWIS ALLEN,
J. P.

Opened and published by order of Court, April T., 1849.

A. BYRNE,
Clerk.

Depositions taken in Fulton on the part of complainant on the 30th day of May, 1848, appear in words and figures following, to wit:

Depositions of witnesses taken subscribed before me, Robert L. Phillips, an acting Justice of the Peace for the County of Hempstead, in the State of Arkansas, duly commissioned and qualified as such, at the tavern house of Hardin Williams, in the town of Fulton in the County and State aforesaid, on the 30th day of May, A. D., 1848, between the hours of 8 o'clock, in the forenoon, and six o'clock in the forenoon of said day, to be read in evidence in a certain cause now pending the Circuit Court of Lafayette County, in the State aforesaid, on the Chancery side thereof, wherein William Wynn is complainant, and Josiah Garland is defendant, on the part of complainant, James P. Jett, a witness known to me to be of lawful age and by me well known, being produced and being by me first duly sworn, to testify the truth, the whole truth and nothing but the truth, touching the matters in controversy between the parties aforesaid, and made answer as follows:

Question 1st. State whether you are acquainted with parties to this suit, and whether you ever made a survey of the lines or either of the lines of the N. E. ¼ of sec. 18, Township 16 S. of R. 25 West, situate in Fisher's Prairie, in said County of Lafayette, and if you made any such surveys, state how many?

Answer. I am acquainted with the parties of this suit. I have surveyed the line running South, from the North-east corner of N. E. ¼ of sec. 18, in Township and range aforesaid, I have run the aforesaid lines three different times, with the same result.

Question 2d. Have you been examined touching all these surveys or either of them in this case?

Answer. I think I was examined after I made the first survey, which was in the summer of 1847. I have not been examined in my last three surveys nor about the persons present at the time those were made.

Question 3d. Was or was not Samuel Hemphill present, at the time of making either of the surveys, if so, at which one?

Answer. He was present at the time I made the second one, which I think was some time in the fall of 1847.

Question 4th. State what other persons were present at the time you made the second survey?

Answer. Andrew Hemphill, James McLaughlin and Thomas Edward, I don't recollect of any other persons being present.

Question 5th. State where you commenced when you run the line, at the time said Hemphill was present, as above stated, and where you ended, and state further, whether said Hemphill was with you all the time you were running the line, and whether he noticed the same?

Answer. I commenced at the North-east corner of N. E. ¼ of sec. 18, being also the section corner in Township and range aforesaid. I run thence South, one-half mile, between sections 17 and 18, in Township and range aforesaid. Said Hemphill was with me during the whole time I was running the line, and appeared to notice the same very particular, and frequently look through the compass to be satisfied of its direction.

Question 6th. Examine paper marked Exhibit A. No. 1, and trace on it starting place of your several surveys, to where they ended?

Answer. I have examined paper A. No. 1, and my survey commenced at A. and ended at B., being the North and South line between the N. E. ¼ of sec. 18, and the N. W. ¼ of sec. 17, in the Township and range aforesaid.

Question. State whether William Wynn or Josiah Garland, have or have not, each a line of fence along the line you run, if so, how near to the line were those fences, and which way did those fences run, and whether the dots on each side of the line you run from A. to B. would represent the fences of those gentlemen, running with said line. State particularly all you know about it?

Answer. Each has a line of fence along the line I run. Garland's fence runs on the East side of the line, and Wynn's on the West side; those fences making a lane between the two plantations of Wynn and Garland; the fences run North and South of the line. Garland's fence is a few feet nearer the line than Wynn's, the line running just along the stakes of Garland's in the line, and some ten or fifteen feet from Wynn's fence, The dots on exhibit A., represent the fences of Wynn and Garland, and the direction of those fences, except that Garland's fence is a little nearer than Wynn's to the line.

Question 8th. State if all or either of your lines run between those two fences?

Answer. They all run between the two fences in the lane, and near the stakes of Garland's fence projecting in the lane.

Question 9th. When you run the lines state whether you or any

other person stuck a stake at the termination of the line at letter B., and where was that stake?

Answer. When I run the line from A. to B., I caused a stake to be stuck at letter B., which was inside of the lane, and within a few feet of Garland's fence.

Question 10th. State whether the same line from A. to B., as designated on exhibit A. No. 1, was ever run by any one in your presence, and if so, with what compass was it so run?

Answer. In the month of April, 1848, James S. Conway run the line above-mentioned in my presence, I carried one end of the chain. He used my compass, and the same which I had previously run the line.

Question 11th. State what difference if any between the line as run by you, and as run by James S. Conway, at the time you speak?

Answer. He run the line a few feet to the right of where I did, that is to say, we started at point A., run to B. He varied in his course with me, at point B. a few feet, being a little further in the lane, towards Wynn's fence.

Question 12th. Who was present at the ttme James I. Conway run that line?

Answer. John Waggoner who assisted me in carrying the chain, and Jesse Tealock and Hosea Barker, Thomas Edwards and others.

Question 13th. In running the line from A to B, did you run the entire line on the east side of the N. E. ¼ of Sec. 18, in T. 16, in range aforesaid.

Answer. I run the entire line as aforesaid, being the whole line between N. E. ¼ of Sec. 18, and the N. W. ¼ of Sec. 17, in township and range aforesaid.

JAMES P. JETT.

Sworn to and subscribed before me, this 30th day of May, A. D., 1848.

R. L. PHILLIPS,
J. P.

The defendant, by his solicitor, excepts to the above depositions of the said James P. Jett, for that the deposition of the said James P. Jett, has been taken heretofore in the same cause, and that said testimony is impertinent and irrelevant to the issue in this cause.

And at the same time and place, also appeared before me, James M. Harvey, of lawful age, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matter in controversy in the cause aforesaid, did on his oath depose and say—

Question 1st. What is your age, and where do you reside?

Answer. I am upwards of thirty years old, and I reside in

Sevier county, Arkansas. I have resided in said county upwards of ten years.

Question 2d. Are you acquainted with Andrew Hemphill, and if so, how long have you known him?

Answer. I am acquainted with him, and have known him for six or seven years, most of which time I resided in his neighborhood.

Question 3d. What is his general character in the neighborhood where he resides, for truth and veracity, and could you believe him on oath?

Answer. His general character for truth and veracity in the neighborhood where he resides is tolerably good, and I should believe him on his oath.

JAMES M. HAYNIE.

Sworn to, and subscribed to, before me, this 30th day of May, A. D., 1848.

R. L. PHILLIPS, *J. P.*

And at the same time and place, also appeared before me, Lawson B. Collins, to me well-known, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in the matters in controversy, between the parties aforesaid, and on his oath depose and say—

Question. Where do you reside, and how long have you so resided?

Answer. I reside in Fulton, Hempstead county, Arkansas, where I have resided for four or five years.

Question. Are you acquainted with Andrew Hemphill, and if so, how long have you known him?

Answer. I have known him for four or five years.

Question. What do you know of his character for truth and veracity?

Answer. So far as I know anything about it, his character for truth and veracity is good.

Question. Would or would you not believe him on oath?

Answer. I think I would.

Cross Examined by Defendant's Counsel:

I speak of his general character for truth and veracity, from what I know of him, and from my dealings and transactions with him.

L. B. COLLINS.

Sworn to and subscribed before me, this 30th day of May, A. D., 1848.

R. L. PHILLIPS.

№ 179 - Garland & Wynn page 223

Sevier county, Arkansas. I have resided in said county upwards of ten years.

Question 2d. Are you acquainted with Andrew Hemphill, and if so, how long have you known him?

Answer. I
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Question 3d
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I speak of his general character for truth and veracity, from what I know of him, and from my dealings and transactions with him.

L. B. COLLINS.

Sworn to and subscribed before me, this 30th day of May, A. D., 1848.

R. L. PHILLIPS.

It is agreed that the above depositions shall be read without notice or didimus, but subject to all other legal objections.

May 30th, 1848.

JOHN FIELD,
Solicitor for William Wynn.

THOMAS HUBBARD,
Solicitor for deft. Garland.

STATE OF ARKANSAS, }
County of Hempstead. } *ss.*

J. Robert L. Phillips, an acting justice of the peace in and for the county and State aforesaid, do hereby certify and make known the foregoing depositions of James P. Jett, James M. Haney and Lawson B. Collins, were taken before me, on the 30th day of May, A. D., 1848, between the hours and at the place in the caption hereof above mentioned, that the examinations, responses and statements of each of said deponents were reduced to writing in my presence, and by the said deponents respectively sworn to and subscribed in my presence at the time and place aforesaid, and that two of said deponents are residents of the county of Hempstead, and the other a resident of the county of Sevier, in the state of Arkansas. In testimony whereof, I, Robert L. Phillips, justice of the peace, do hereunto set my hand at Fulton, in the state of Arkansas, this 30th day of May, 1848.

ROBERT L. PHILLIPS,
J. P.

R. L. Phillip's, Justice fees, -	$ 75
James P. Jett, witness, - - -	1 00
L. B. Collins, do - - - -	1 00
Jas. M. Haynie, do - - -	1 00
	$3 75

Opened and published by order of Court, April 30, 1849.

A. BYRNE,
Clerk.

(*For Plat, see Original, page* 233.)

Exhibit A, No. 1.

This is exhibit A, No. 1, referred to in my depositions.

Attest, JAMES P. JETT.

Test, R. L. PHILLIPS,
J. P.

It is agreed that the above depositions shall be read without notice or didimus, but subject to all other legal objections.

May 30*th*, 1848.

JOHN FIELD,
Solicitor for William Wynn.
THOMAS HUBBARD,
Solicitor for deft. Garland.

STATE OF ARKANSAS, }
County of Hempstead. } *ss.*

J. Robert L. Phillips, an acting justice of the peace in and for the county and State aforesaid, do hereby certify and make known the foregoing depositions of James P. Jett, James M. Haney and Lawson B. Collins, were taken before me, on the 30th day of May, A. D., 1848, between the hours and at the place in the caption hereof above mentioned, that the examinations, responses and statements of each of said deponents were reduced to writing in my presence, and by the said deponents respectively sworn to and subscribed in my presence at the time and place aforesaid, and that two of said deponents are residents of the county of Hempstead, and the other a resident of the county of Sevier, in the state of Arkansas. In testimony whereof, I, Robert L. Phillips, justice of the peace, do hereunto set my hand at Fulton, in the state of Arkansas, this 30th day of May, 1848.

ROBERT L. PHILLIPS,
J. P.

R. L. Phillip's, Justice fees, -	$ 75
James P. Jett, witness, - - -	1 00
L. B. Collins, do - - - - -	1 00
Jas. M. Haynie, do - - -	1 00
	$3 75

Opened and published by order of Court, April 30, 1849.

A. BYRNE,
Clerk.

(*For Plat, see Original, page* 233.)

Exhibit A, No. 1.

This is exhibit A, No. 1, referred to in my depositions.

Attest, JAMES P. JETT.

Test, R. L. PHILLIPS,
J. P.

Depositions taken in pursuance of notice and commission on the 15th day of February, 1849, all of which appear in words and figures following:

To JOSIAH GARLAND, ESQR.

I will attend at the law office of John Field, in the town of Washington, in the county of Hempstead, in the state of Arkansas, on the 15th day of the present month, and will then and there, between the hours of 8 o'clock in the forenoon, and 6 o'clock in the afternoon of said day, take the depositions of witnesses to be read as evidence in my behalf, on the trial of certain cause, now pending in the Circuit Court of Lafayette county, in the state aforesaid, on the chancery side thereof, wherein I am complainant, and you are defendant, and I will continue from day to day, till all are taken.

February 5th, A. D., 1849.

WILLIAM WYNN.

By JOHN FIELD,
One of his Solicitors.

The evidence of service of the foregoing notice, appears endorsed thereon in words and figures, following, to wit:

I executed the within notice on the within named Jcsiah Garland in Lafayette county, Arkansas, by delivering to him, the said Garland, a true and perfect copy of the same, on the 6th day of February, A. D., 1849.

W. P. CRYER,
Sheriff.

Service, 50 cts., mileage, 6.

STATE OF ARKANSAS, *County of Sevier.* } *S. Ct.*

LAFAYETTE CIRCUIT COURT IN CHANCERY, *January Term.*

Jan. 6th, A. D., 1848.

WILLIAM WYNN, Complainant,
vs.
JOSIAH GARLAND, Defendant. } In Chancery.

At this day came said parties by their solicitors, and on motion it is ruled and ordered that they have, and leave is hereby granted unto them, to take the depositions of witnesses generally before any judge or justice of the peace of any of the States of the United

States or Territories thereof, to be read in evidence on the final hearing of this cause, and that commissions issue for that purpose. A true copy from the record.

A. BYRNE,
Clerk.

To any Judge or Justice of the Peace of any of the States of the United States or Territories thereof, greeting:

Know ye, that we reposing confidence in your prudence and fidelity, do by these presents, give you authority diligently to examine witnesses whatever that the said William Wynn may bring before you in a certain suit now pending in our Circuit Court, in and for the County of Lafayette, in which I am complainant, and you are defendant.

Therefore we desire you that at certain times and places by you to be appointed for that purpose you cause the witnesses to come before you, and that you then and there examine them upon their corporal oaths first taken before you upon the Holy Evangelists; that you reduce such examination to writing, and when you shall so have taken that, you send the same with this commission closed up under your seal to us in our said Circuit Court, in the town of Louisville, without delay.

[SEAL.]

In testimony whereof I have hereunto set my hand as Clerk and officered the seal of said Court at office, this 7th day of February, in the year of our Lord, one thousand eight hundred and forty-nine, and in the year of American Independence 73d.

A. BYRNE,
Clerk.

The execution of this commission appears by reference to the schedule hereto annexed.

Attest,

RICHARD B. PENDOM,
Justice of the Peace of Hempstead county Ark.

Depositions of witnesses taken and subscribed before me, Richard B. Pendom, an acting Justice of the Peace, for the County of Hempstead, in the State of Arkansas, duly qualified, on the 15th day of February, A. D., 1849, at the law office of John Field, in the town of Washington, in the County and State aforesaid, in pursuance of a commission hereto annexed, to be read as evidence on the trial of a certain cause now pending in the Circuit Court of

Lafayette county, in the State aforesaid, on the Chancery side thereof, wherein William Wynn is complainant, and Josiah Garland is defendant, on the part of the complainant.

Richard F. Sullivan, a witness known to me to be of lawful age, being to me produced at the time and place aforesaid, and being by me first duly sworn, to testify the truth, the whole truth and nothing but the truth, touching the matters in controversy between the parties aforesaid, made answer to the interrogations propounded as follows:

Question. Where do you reside.

Answer. I reside in Hempstead county Arkansas.

Question. How long since you first came to Arkansas.

Answer. I came to look at the State in the spring of 1833. I came to look at the Southern or Red River portion of it, say the counties of Lafayette, Hempstead, &c., &c. I moved to said State with my family, in 1834, and settled in Lost prairie, Lafayette county, Arkansas.

Question. Are you or not acquainted with the N. E. ¼ of Sec. 18, in T. 18, S. of R. 25 West? If so, how long have you known it? and where does it lie?

Answer. I have been on the qr. section aforesaid since it was surveyed. I was on it previous to that time in the years 1833 and 1834. It lays in Lafayette County, and is part of what is called Fisher's prairie.

Question. Who resided on that quarter section in the years 1833 and 1834, when you were there, as aforesaid, and who resides on it now?

Answer. Massach Janes resided on it in the year 1833. I don't remember who resided on it in 1834, whether Massach Janes, Brownders. Willinm Wynn, the complainant resides on it at present.

Question. State if you know whether or not any portion of said quarter section was in the possession, or was cultivated in the year 1833, and previous thereto, by any person other than said Massach Janes?

Answer. I don't know who cultivated it previous to the year 1833. In 1833 by Massach Janes, and in 1834 by a man by the name of Brownder, who I think was an overseer for one Doctor Jones.

Question. State if you know Samuel Hemphill, and if so, where did they reside in the year 1833, and did they, or either of them, cultivate in said year any portion of said quarter section?

Answer. I became acquainted with Samuel Hemphill in the year 1833, and was at his mother's once in that year, the only time I ever saw her. I don't believe either of them cultivated any of said quarter section in that year.

Question. Where did Mrs. Hemphill and the said Samuel reside in the year 1833, on what section or quarter section?

Answer. They resided on the quarter section immediately east of the aforesaid qr. sec., it being the N. W. ¼ of sec. 17, and township and range aforesaid. I don't know whether Samuel Hemphill resided on that quarter section or not, but his mother did, and Samuel at her house.

Question. State as near as you can, how near the improvements of Mrs. Hemphill came, in the year 1833, to the said N. E. ¼ of sec. 18, on which complainant now resides?

Answer, I cannot state positively how near it came. I can only state my opinion about it from observation. My opinion is that it came very near to where the half mile corner between the two sections now stands.

Question. State if you can whether Mrs. Hemphill's improvements, or Samuel Hemphill's crossed the lines between the quarter sections aforesaid at any point?

Answer. I think they did not.

Question. Was there or not any improvement on said N. E. ¼ of sec. 18, in the year 1833, other than that of Massach Janes?

Answer. There was none between Massach Janes and Mrs. Hemphill's. There might have been some on S. western portion of the qr. section. I have not examined how far that quarter section extended west in the prairie

(*Cross-examined by Defendant.*)

Question. What time in the year 1833 were you on the said N. E. ¼ of sec. 18, and how many times were you on that quarter section in said year?

Answer. I was there between the 15th of March and the 3d of May, repeatedly.

Question. How long since you have seen that quarter section?

Answer. About one month, or two months since. I then went and looked at the corner, and also followed the section line to the half mile corner.

Question. What section corner did you examine?

Answer. The N. E. corner of sec. 18, and the N. W. corner of section 17.

Question. Please describe the corner. Was it in the timbered land, on trees, or where was it?

Answer. It was in the timbered land, the marks were on trees, the bearing trees, and further this deponent saith not.

R. F. SULLIVAN.

Sworn to and subscribed before me the day and year in the caption mentioned.

RICHD. B. PURDOM,
J. P.

STATE OF ARKANSAS, *Hempstead County.*

I, Richard B. Purdom, an acting Justice of the Peace, duly commissioned and sworn as such, in and for the County of Hempstead, in the State of Arkansas, do hereby certify that the foregoing depositions of Richard F. Sullivan, and John W. Cocke, were taken before me, on the 15th day of February, 1849, between hours and at the place in the caption hereof above mentioned, that the examinations, responses and statements of each of said deponents were reduced to writing in my presence, and by the said defendants respectively sworn to and subscribed in my presence, at the time and place aforesaid; and that the said deponents are residents of the County of Hempstead, in the state aforesaid.

In testimony whereof, I, Richard B. Purdom, Justice of the Peace as aforesaid, do hereunto set my hand, at Washington, in the county of Hempstead, and state of Arkansas, this 15th day of February, 1849.

RICHARD B. PURDOM,
J. P.

(*Costs.*)

Taking depositions and certificates, &c., $1.31

RICHARD B. PURDOM,
J. P.

Opened and published by order of Court, April 30, 1849.

A. BYRNE,
Clerk.

The depositions of John W. Cocke, referred to in the foregoing certificate was suppressed and cancelled, and not read by agreement of parties, and therefore not herein copied.

Depositions in pursuance of notice and commission, taken on the part of complainant, on the 22d day of June, 1848, which appear in words and figures following, to wit:

To JOSIAH GARLAND, ESQR.,

I will take the depositions of witnesses at the office of Lawrence P. Crane, Esq., in the town of Shriveport, in the state of Louisiana, on the 22d day of June. A. D., 1848, between the hours of 8 o'clock in the morning and 6 o'clock in the evening of said day, to be read as evidence in my behalf, on the trial of a certain cause now depending in the Circuit Court of Lafayette county, in the state of Arkan-

sas, wherein I am complainant, and are defendant, and I will continue taking said depositions from day to day till all are taken.

WILLIAM WYNN.

Lafayette Co., Ark., May. 17th 1848.

BY PIKE, COCKE, AND FIELD,
His Solicitors.

I do hereby certify that I executed within notice on Josiah Garland, in the town of Lewisville, by delivering to the aforesaid Garland, a true copy of the within notice, on 19th day of May, A. D., 1848.

Service of notice, - $0 50.

A. C. OWEN,
Sheriff of Lafayette County, Ark.
By WILLIAM GUART,
Deputy Sheriff.

LAFAYETTE CIRCUIT COURT,

Jan'y Term, A. D. 1848.

STATE OF ARKANSAS, } *S. Ct.*
County of }

WILLIAM WYNN, }
vs. } In Chancery
JOSIAH GARLAND. }

At this day came said parties by their solicitors, and on motion it is ruled and ordered that they have and leave is hereby granted unto them to take the depositions of witnesses generally, before any Judge or Justice of the Peace, of any of the States of the United States or Territories thereof, and that commissions issue for that purpose.

A true copy of the record.

Attest,

J. D. JONES,
Clerk.

To any Judge or Justice of the Peace of any of the States of the United States or Territories thereof, greeting:

WILLIAM WYNN,
vs.
JOSIAH GARLAND.

Know ye that we reposing confidence in your prudence and fidelity, do by these presents give you authority diligently to examine all witnesses whatever that may be produced, in a certain suit now pending in our Circuit Court, in and for the County of Lafayette, in which William Wynn is complainant, and Josiah Garland is defendant.

Therefore we desire you that at certain times and places, by you to be appointed for that purpose, you cause the witnesses to come before you and that you then and there examine them upon their corporal oaths first taken before you upon the Holy Evangelists. That you reduce their examinations to writing, and when you shall so have taken them that you send the same with this commission closed up under your seal to us in our said Circuit Court at the town of Lewisville, without delay.

In testimony whereof I have hereunto set my hand and as Clerk, and fixed the seal of said Court at office, this—day of June, in the year of our Lord, one thousand eight hundred and forty-eight, and in the 72d year of American Independence.

[SEAL.]

J. D. JONES,
Clerk.

The execution of this commission appears by reference to the schedule hereto annexed.

Attest,

J. P.

Depositions of witnesses taken and subscribed before me, Joseph Clinton Beall, an acting Justice of the Peace, for the Parish of Caddo, in the State of Louisiana, duly commissioned as such on Thursday the 22d day of June, A. D., 1848, between the hours of 8 o'clock, A. M., and 6 o'clock, P. M., of said day, at the office of Lawrence P. Crane, Esq., in the town of Shreveport, in Parish of Caddo, in the

State of Louisiana, in pursuance of a commission hereto annexed and to be read as evidence in a certain cause now depending in the Circuit Court of the County of Lafayette, in the State of Arkansas, wherein William Wynn is plaintiff and Josiah Garland is defendant, on the part of the plaintiff.

Hosea Baker, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn, to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy aforesaid, in the suit aforesaid, did then and there on his oath aforesaid, depose as follows, to wit:

WILLIAM WYNN,
vs.
JOSIAH GARLAND.

(*Interrogatories put to Hosea Baker, witness.*)

Question 1st. What is your age, and where do you now reside: and are you acquainted with the parties to this suit, and how long have you known them?

Question 2d. State if you ever resided in Fisher's Prairie, in the County of Lafayette, Arkansas, if so, when, how long, for whom, and in what capacity, please state fully?

Question 3d. You say you lived on the farm of Josiah Garland, situated in said prairie in 1837, in the capacity of overseer; state how many hands said Garland worked on said, in 1836, and how many did he work there in 1837?

Question 4th. You say that Josiah Garland worked nine hands on said farm in 1836, and in 1837, he added 13 more, making 22 in all; please state if Garland extended his farm in 1837; if so, please state whether it was North, South, East or West. State when you left his services, and when you left the State of Arkansas, and please state how many houses of every description were standing in Garland's farm, and how many did you remove from the old settlement of Hemphill, and at what point did you rebuild them, and state if you have been back in Fisher's Prairie, and on and about complainant's and defendant's farms since you left Arkansas?

Question 5th. You say that you were there in April last, (1848,) state who was there, and if James S. Conway, in conjunction with James P. Jett, run off with chain and compass, the North and South line between the N. W. ¼ of sec. 17 and the N. E. ¼ of sec. 18, T. 16, R. 25 Wt?

Question 6th. You state you were there and saw the North and South line between the quarter sections aforesaid, run by Conway and Jett, now please state whether or not, Garland's farm or im-

provements extended up to or West of that line, when you went to live with him in 1837, state whether or not you found any timber standing on the North and South line, when you went to live with Garland, in 1837. State fully all you know about it?

Question 7th. You say there was timber on both sides of the line aforesaid; please state where Garland's West line of fence was in 1839; and state where it is at present, or at least where you saw Conway and Jett run the line in April last. Examine paper marked exhibit No. 1, and state every fact fully, refer each time to said paper, by letters, marks, figures and dots, as will render your statement plain, clear and intelligible?

Question 8th. When you went to live with Garland, in 1837, state whether there had been any cultivation on any part of the N. W. ¼ of sec. 17, as far West as the North and South line run by Conway and Jett, and whether there was any marks of improvement or cultivation West of Garland's west fence, from C. to D.—When you went to live with him in 1837, state fully all you know about it?

Question 9th. State as near as you can, how far Garland's west line of fence stood from C. to D., in 1838, East of his present West line of fence running G. to G., state fully?

To the first interrogatory he answers. That he is thirty-four years of age, and resides at present, in the Parish of Bassir, in the State of Louisiana; that he knows the parties to the suit, both plaintiff and defendant, and has known them since the year 1837.

To the second interrogatory he answers and says, that he resided the whole of the year 1837, and until about the 1st of April, 1838, with the defendant, Josiah Garland, on his plantation, in Fisher's Prairie, in the County of Lafayette, Arkansas, in capacity of overseer for said Garland.

To the 3d interrogatory he answers, that in the year 1836, defendant worked about ten or eleven hands. About the 1st of January, 1837, defendant brought ten or eleven hands from Tennessee, placed them upon said plantation, making in all worked upon said place during the year 1837, from twenty to twenty-two hands.

To the fourth interrogatory he answers, that he did in 1837, extend his farm. He, defendant cleared up about fifteen acres of timbered land in a North-west direction from the Hemphill settlement. Defendant also cleared up about 15 acres of what was called raw prairie land, and lying South-west of the timbered land, above mentioned, and along side of it. Witness further states, that about fifty acres more were cleared up in 1837, South-east from the Hemphill settlement, and the plantation was widened and straightened in several places, the fifty acres above-mentioned were rather more South than East from the Hemphill settlement. He, witness, left defendant's services, in the Spring of 1838, and left the State of Arkansas, in the Spring of 1839. There were on defendant's plantation, in 1837, when witness went there an old mill, a gin-

house, a double log-cabin, and two old negro cabins nearly rotten down. He, witness, moved the mill from where it stood on the river bank, a little to the North of West, about a half a mile from where it stood. The balance of the houses were torn down and new ones were built. From about a hundred to one hundred and fifty yards from where the old houses stood, and in a North-west direction from the same. Witness says he has been back to Fisher's Prairie since he left Arkansas, he was there in April 1848, and was on the farm of the plaintiff and around the lines of the defendant's farm.

To the 5th interrogatory he answers, that he was along with James S. Conway, who in company with James P. Jett, run off with chain and compass, the North and South line between the North-west quarter of section 17, and the N. E. qr. of sec. 18, T. 16, R. 25 West. Witness further says, that there were several persons there, amongst them were John Justice, Jesse Tealock, John Waggoner, and Judge Hightower.

To the sixth interrogatory, he answers and says, that an old fence of defendant's, extended beyond the line mentioned when he went to live with him, in 1837, but that no improvement or cultivation was made up to the line or within one hundred yards of it, until 1837. In that year defendant cleared up and cultivated land up to and beyond said line. Witness says there was a small strip of timber on both sides of the line, in 1837, when he went to live with defendant.

To 7th int'y, He answers, that when he went to live with defendant, in 1837, his, defendant's West line of fence was about 250 yards on the West side of the line, between sections 17 and 18, said fence was old and dilapidated but witness had it rebuilt. In April, 1848, when witness was there, defendant's West line of fence was on the North and South line between secs. 17 and 18. Witness further says, that in 1837, at the time he made the clearing above-mentioned, he saw no evidences of cultivation of land, either along the line or West of the line between sec. 17 and 18. But on both sides of the line the ground was very heavy and difficult to break up and require two yokes of oxen to break it up, and from the then appearance of it, he does not think it had ever been in cultivation before.

To the eight interrogatory, he answers, that he has fully answered this interrogatory, in his answer to the 7th interrogatory, to which he refers for his answer to this.

To the ninth interrogatory he answers, that he makes no reference in his answers, to any exhibit or papers, but that he has answered this interrogatory in his answers to the other interrogatories, and further he says not.

HOSEA BARKER.

And at the same time and place also appeared before me, Jesse Tealock, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn to testify the truth, the whole truth and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there, on his oath aforesaid, depose as follows, to wit:

WILLIAM WYNN,
vs.
JOSIAH GARLAND,

Interrogatories put to Jesse Tealock, witness.

Question 1st. What is your age, and where do you reside, and are you acquainted with the parties to this suit, if so, how long have you known them.

Question 2d. State if you ever resided in Fisher's prairie in the county of Lafayette, Arkansas, if so, when, how long, for whom, and in what capacity, state fully?

Question 3d. You say you reside ——— with in the year ——— Please state whether you were, or were not present, when Charles E. Moore made a survey of the public lands situate on the S. W. side of Red River, and particularly of the lands in Fisher's prairie, if so, state whether or not you saw him run any particular line, and if so, what line, and between what quarter sections. Examine paper marked Exhibit No. 1, and state if you can by letters, marks, dots, & figures, what line you saw said Moore run in 1840, and where he planted his stake in the open prairie, if so, state at what letter said stake was stuck. State very fully?

Question 4th. State where you were in 1841, and in 1842, and since, and at what time you left the state of Arkansas.

Question 5th. State whether you visited Fisher's prairie in 1848, if so, at what time, who was there, what was done, and all about it, and state if you were at the place where you saw said Moore stick the stake at point B, on paper No. 1, in 1840. State all you know.

Question 6th. You say that you saw the line run between points A & B, by James S. Conway, in April last, state how that line compared with the survey or line that you saw Moore run in 1840.

Question 7th. You say that you recollect where Moore stuck the stake at point B, as designated in the map. Please state whether or not you saw at any time, since Moore's survey, that stake standing in a different place. If so, state where it was, and when it was, and all about it, full and explicit?

Question 8th. State whether or not, if you can, how far west Garland's old mill stands west of his field, in 1836. State also, if Hosea Barker did not remove said mill from the river bank, in 1837, and place the same where it now stands, and state as near as you can how far the mill is east of the line run by Conway & Jett, in April last?

To the first interrogatory he answers, that he is forty-five years of age, resides in the parish of Caddo—is acquainted with plaintiff and defendant, and has known them since the year 1835.

To the 2d & 3d interrogatories, he answers, that he resided there in 1842, as an overseer for William Wynn, and that he was present when Charles E. Moore made his survey of public lands in the year 1840, situated on the S. W. side of Red River, and particularly those lands in Fisher's prairie, and saw said Moore run the line between plaintiff and defendant, that is the north and south line between sections 17 & 18. That he saw Moore plant the mile and half mile stake on the line above referred to, that said lines are correctly represented on exhibit marked No. 1, hereto annexed. That the dot at letter B, on the north and south line between secs 17 & 18, correctly represents the half mile post on said line, as planted by said Moore, in the year 1840. The half mile stake planted by Moore as above referred to, stood in an open prairie, and about 125 or 130 yards south west from Garland's old mill.

To 4th interrogatory he answers, that he was in Caddo parish, Louisiana, part of the year in Lafayette county, Arkansas, part of the year. In 1842 he resided in Fisher's prairie. In 1843 he lived in the state of Arkansas, and in 1844 he came back to Caddo parish, Louisiana, where has resided ever since.

To fifth interrogatory he answers, that he did visit Fisher's prairie in April, 1848, that there were several persons there; that among them were John Justice, John Waggoner, Hosea Barker, Judge Hightower and others, at which time Conway and Jett run the north and south line, between sections 17 & 18, and that he witness, was at the place when Moore stuck the stake at point B, on paper No. 1, in 1840. Witness saw Conway & Jett plant the half mile stake between said sections 17 & 18, and it was within a few feet of where Moore's was planted.

To sixth interrogatory, he answers, that the line which he saw Conway and Jett run, as represented by the letters A & B, on exhibit No. 1, corresponds without any material variation with the line run by Moore, in 1840.

To 7th interrogatory he answers, that in 1842, he saw the stake that had been planted by Moore, in 1840, as represented by letter B, on the exhibit hereto referred to, had been removed about 100 or 110 yards in a direction north of east, from its original position and south of Garland's mill.

To eighth interrogatory he answers, that Garland's old mill stands at least 150 yards west of his field in 1836. In 1837, Hosea Barker then overseer of defendant, removed the mill from the river bank, to where it now stands; the distance as witness thinks, of about three quarters of a mile. The mill stands from 120 to 125 yards east of the line run by Conway and Jett in April last. Witness further says, that 1835 and 1836, there was a space of uncultivated land of about 300 yards width, between the farms

of plaintiff and defendant, that there was an old fence running north and south, about 200 yards west of the line run by Conway and Jett, bordering upon the cultivated lands of Joseph Jones, from whom plaintiff purchased in 1835, which fence, he, witness, always understood and considered to be Jones'.

JESSE TEALOCK.

STATE OF LOUISIANA, }
Parish of Caddo, } ss.

I, Joseph Clinton, Beall, an acting and duly commissioned Justice of the Peace in and for the Parish of Caddo, in the state of Louisiana, do hereby certify and make known that the foregoing depositions of Hosea Barker and Jesse Tealock were taken before me, on the 22d day of June, A. D., 1848, between the hours and at the place in the caption hereof above mentioned; that the examination, responses, and statements of each of said deponents were reduced to writing in my presence, and the said deponents respectively sworn to and subscribed in my presence, at the time and place aforesaid, and that one of said deponents, viz:—Hosea Barker, is a resident of the Parish of Bossier, in the state of Louisiana, and the other, viz: Jesse Tealock, a resident of the Parish of Caddo, in the state of Louisiana.

In testimony whereof, I, Joseph C. Beall, Justice of the Peace, do hereunto set my hand, at Shriveport, in the Parish of Caddo, in the state of Louisiana, this 22d of June, A. D., 1848.

JOSEPH C. BEALL,
J. P.

STATE OF LOUISIANA, }
Parish of Caddo. }

I, John M. Lewis, Clerk of the district court of the Parish of Caddo, state of Louisiana, which Court is one of record, do hereby certify that Joseph C. Beall, whose name appears above and which I recognize, was at the time of taking the foregoing depositions, and is now, an acting Justice of the Peace, in and for the Parish of Caddo.

In testimony whereof, I have, by my deputy, Wm. C. McDougal, hereunto set my hand, and affixed the seal of the town of Shriveport, this 23d day of June, A. D., 1848.

[SEAL.]

JOHN M. LEWIS,
Clerk.
Per WM. C M'DOUGAL,
D. Clk.

For taking above depositions, $4.75.

Opened and published by order of Court, Apr. 30th, 1848.

A. BYRNE,
Clerk.

Depositions taken on part of complainant before T. C. D. French, on the last and first days of Nov. and Dec., 1848, together with notice and commission, appear in words and figuers following, to wit:

To JOSIAH GARLAND, ESQ.,

Take notice that I will attend at the residence of Thomas C. D. French, Esq., in the county of Sevier, in the state of Arkansas, on the 30th day of November, A. D., 1848, and will then and there, between the hours of eight o'clock in the morning and six o'clock in the afternoon of said day, take the depositions of witnesses, to be read in evidence on my behalf, on the trial of a certain cause, now pending in the Circuit Court of Lafayette County, in the state aforesaid, wherein I am complainant and you are defendant, and I will continue from day to day till all are taken.

WILLIAM WYNN.

BY COCKE, PIKE, AND FIELD,
His Solicitors.

I executed the within notice on the within and named, Josiah Garland, by delivering to him a true and perfect copy of the same in the town of Lewisville, county of Lafayette, and state of Arkansas, on the 16th day of November, A. D., 1848.

W. P. CRYER,
Sheriff.

Service, 50 cts.

STATE OF ARKANSAS, *County of Lafayette.* } In Lafayette Circuit Court, on the Chancery side thereof Jan'y Term, 1848.

WILLIAM WYNN, Complainant, *vs.* JOSIAH GARLAND, Defendant. } In Chancery.

At this day came said parties, by their solicitors, and on motion, it is ruled and ordered that they have, and leave is hereby granted unto them to take the depositions of witnesses generally, before any Judge or Justice of the Peace of any of the states, of the United States, or territories thereof, to be read in evidence on the final hearing of this cause, and that commissions issue for that purpose. A true copy from the record.

Attest, J. D. JONES,
Clerk.

To any Judge or Justice of the Peace, of any of the states of the United States, or territories thereof, greeting:

WILLIAM WYNN, Complainant,
vs.
JOSIAH GARLAND, Defendant.

Know ye that we, reposing confidence in your prudence and fidelity, do, by these presence, give you authority diligently to examine all witnesses whatever, that the said William Wynn may bring before you, in a certain suit now pending in our Circuit Court, in and for the said County of Lafayette, and on the chancery side thereof, on which William Wynn is complainant, and Josiah Garland is defendant. Therefore, we desire you, that at certain times and places, by you to be appointed for that purpose, you cause the witnesses to come before you, and that you, then and there, examine them separate and apart upon their corporal oath, first taken before you upon the Holy Evangelists, that you reduce their examinations to writing, and when you shall have taken them, that you send the same, with this commision, closed up under your seal, to us, in our said circuit court, at the town of Lewisville, in the county aforesaid, without delay.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of said Court, at office this 19th day of May, in the year of our Lord, one thousand eight hundred and forty-eight, and this 72d year of American Independence.

[SEAL.] J. D. JONES,
Clerk.

The execution of this commission appears by reference to the schedule hereto annexed.

Attest, THOMAS C. P. FRENCH,
J. P.

After swearing the witnesses at the time and place aforesaid in conformity to law, I do hereby adjourn the taking of said depositions till December 1st, A. D., 1848, at the place and between the hours mentioned in the caption thereof.

THOMAS C. P. FRENCH,
J. P.

Nov. 31st, 1848.

Depositions of witnesses taken and subscribed before me, Thomas C. P. French, an acting Justice of the Peace, for the County of Sevier in the State of Arkansas, duly commissioned as such on the 30th day of Nov., 1848, at my residence in said county, between the hours of 8 o'clock, in the morning, and 6 o'clock, in the afternoon of said day, in pursuance of a commission hereto annexed and to

be read as evidence on the trial of a certain cause now pending in the Circuit Court of the County of Lafayette, in the State aforesaid, on the Chancery side thereof, wherein William Wynn is complainant and Josiah Garland is defendant, on the part of said complainant.

Rutsan V. R. Green, a witness known to me to be of lawful age, being to me produced at the time and place aforesaid, and being by me first duly sworn, to testify the truth, the whole truth, and nothing but the truth, touching the matters in controversy between the parties aforesaid, made answer to the interrogatories herein, as follows:

Question 1st. What is your age and place of residence, and how long have you so resided?

Answer. About 30 years; residence Jackson Township, Sevier County, Arkansas, over eight years.

Question 2. Are you acquainted with Samuel Hemphill; if so, how long have you known him, and where has he resided since you became acquainted with him, and where, when you first became acquainted with him, and where is he at present; if dead, state when he died?

Answer. I have had a slight acquaintance with Samuel Hemphill for five or six years in Texas and Arkansas, in Texas, in his grave as I have been informed, I do not remember.

Question 3d. Examine paper marked Exhibit A., here shown, and state whether or not, said Samuel Hemphill made such an affidavit before you at the time therein stated, and whether you were then a duly commissioned and qualified Justice of the Peace for the County of Sevier, in the State of Arkansas. State particularly.

Answer. I have examined paper marked Exhibit A., and fully believe it to be a copy of an affidavit made before me by Samuel Hemphill, at the time and date thereof, and I was a duly commissioned and qualified Justice of the Peace for the County of Sevier, and State of Arkansas, at that time.

Question 4. You say said Hemphill made such an affidavit before you, as the one purports to be here shown and marked Exhibit "A.," please state at whose instance and request did he make said affidavit, and state whether said Hemphill expressed himself as entirely satisfied that he had cultivated in 1829 and 1830, the land mentioned in said affidavit, or did he appear to have doubts about. State all that he said?

Answer. I do not know of my own knowledge who requested said Hemphill to make said affidavit, but a young man who said his name was Garland, requested me te take said affidavit and paid me for so doing, said Samuel Hemphill expressed some doubt as to the certainty of the situation of the land about which he was giving his affidavit, and it took him some time to make it. Said Hemphill told me he offered to go down and see the land in question, and thereby save dispute, if he could have his expenses paid, and some thing for his trouble.

Question 5. You say Hemphill signed and swore to the affidavit at the instance and request of William H. Garland, a son of the defendant. State how said Hemphill happened to think he did cultivate the quarter section referred to in his affidavit. State what papers, notes, or maps had he or any person to assist him on that occasion. State all you saw and heard?

Answer. The reason I should think that said Samuel Hemphill had for believing he cultivated the land mentioned in the affidavit, was from a map shown to him by Mr. Garland, at the time he was making said affidavit.

Question 6th. Where did said Samuel Hemphill reside at the time he made the affidavit, and have you conversed with him relative to said land, since he saw it surveyed; if so, what did he say?

Answer. I believe he resided in Texas; I have not.

Question 7th. Do you know Andrew Hemphill, if so, how long have you known him?

Answer. I have known Andrew Hemphill for the last eight years.

Question 8th. What is character for truth and veracity among his neighbors; and would you believe him on oath?

Answer. His character for truth and veracity is good, and I would fully believe him on oath.

R. V. R. GREEN.

THOMAS C. P. FRENCH,
J. P.

STATE OF ARKANSAS, } ss.
County of Sevier, }

I, Thomas C. P. French, an acting and duly commissioned Justice of the Peace in and for the county of Sevier, in the state of Arkansas, do hereby certify and make known that the foregoing depositions of Ruston V. R. Green was taken before me, on the 30th day of November, A. D., 1848, between the hours and at the place in the caption hereof above mentioned, and that the examinations, responses and statements of said deponent was reduced to writing in my presence, and by said deponent sworn to and subscribed in my presence, at the time and place aforesaid, and that said deponent is a resident of the county of Sevier, in the state of Arkansas.

In testimony whereof, I, Thomas C. P. French, Justice of the Peace, do hereunto set my hand, at my residence in the county of Sevier, and state of Arkansas, this the first day of December, A. D., 1848.

THOMAS C. P. FRENCH.

For taking depositions, and riding to Fulton to deposit package in Post-Office, Ten Dollars. Rec'd payment therefor, plaintiff.

THOMAS C. P. FRENCH.

Exhibit A, referred to in foregoing depositions, appears in words and figures following, to wit:

"Testimony on file with entry, No. 4671, in name of Samuel Hemphill,"

STATE OF ARKANSAS, *County of Sevier.*

UNITED STATES OF AMERICA.

Be it remembered that on this 16th day of February, in the year of our Lord, 1843, Samuel Hemphill, late of the county of Lafayette, in the state aforesaid, personally appeared before me the undersigned, an acting Justice of the Peace, within and for the said county of Sevier, and on his oath deposes and says, that in the year 1829, he cultivated about fifteen or twenty acres, which he believes according to the map hereunto annexed to be on the N. E. ¼ of sec. 18, in T. 16, S. of R. 25 west, south of Red River, in the district of lands subject to sale at Washington, Arkansas, and that he had possession thereof on the 29th day of May, in the year 1830, and further he says not.

S. HEMPHILL.

Sworn to before me, the day and year first above mentioned.

R. V. R. GREEN,
J. P.

Endorsed on said Exhibit is the following, to wit:

This paper is marked Exhibit A, refered to by R. V. R. Green, in his deposition hereto annexed.

Attest, R. V. R. GREEN.

Attest, THOMAS C. P. FRENCH,
J. P.

Opened and published by order of Court, April 30, 1849.

A. BYRNE,
Clerk.

Depositions in pursuance of notice, taken before Charles K. Wetter, Commissioner, appointed by, &c., for that purpose, on the 17th day of November, 1849, which appears in words and figures following, to wit:

To Col. Josiah Garland:

Take notice that I shall attend at the law office of John Field, Esqr., In the town of Washington, Hempstead county, and state of Arkansas, on Saturday, 17th inst., between the hours of eight o'clock, A. M., and 6 o'clock, P. M., of said day, to take the depositions of witnesses to be read in evidence in my behalf, of all litigated matters now depending in the Circuit Court of Lafayette county, and submitted to the award of Capt. A. Pike, and Maj. James M. Curren, when and where you may attend if you think proper.

WILLIAM WYNN.

Nov. 12th, 1849.

State of Arkansas, *Lafayette County.*

I, John S. French, do solemnly swear that I executed the within notice on the witness named Josiah Garland, on the 12th day of November, A. D., 1849, by delivering to him in the county of Lafayette, and state aforesaid, a true and perfect copy of the same.

JOHN S. FRENCH.

Sworn to and subscribed before me the undersigned, an acting and duly commissioned Justice of the Peace, in and for the County aforesaid, this the 14th day of November, A. D., 1849.

C. E. McCATCHEM,
J. P.

The execution of this commission appears by reference to the schedule hereto annexed.

Attest, CHAS. K. WETTER,
Commissioner.

Depositions of witnesses taken and subscribed before me, Charles K. Wetter, one of the commissioners appointed by the Lafayette Circuit Court, in the chancery sitting, to take and certify depositions to be read as evidence on the determination of certain cases there pending in said Circuit court of Lafayette county, between William Wynn and Josiah Garland, submitted to Albert Pike and James M. Curran, Esqrs., at the office of John Field, in the town of Washington, county of Hempstead, in the state of Arkansas, on the 17th day of November, A. D., 1849, agreeably to a notice hereto annexed, and to be read in behalf of William Wynn.

Abraham Block, a witness known to me to be of lawful age, being by me first duly sworn to testify the truth and nothing but the truth touching the matters in controversy between the parties aforesaid, did, on his oath depose and say:

Question. Where did you reside, and how long have you so resided?

Answer. I reside in Washington, Hempstead county, Arkansas, and have so resided for about thirty-five years.

Question. Are you acquainted with Andrew Hemphill? If so, how long have you known him? Are you acquainted with his general character in the neighborhood where he resides, for truth and veracity? If so, would you believe him on oath from what you know of him?

Answer. I am acquainted with said Hemphill, and have known him for near twenty-three years. I am acquainted with his general character in the neighborhood where he resides, for truth and veracity, and I would certainly believe him on oath.

ABRAHAM BLOCK.

Sworn to and subscribed before me, the day and year in the caption above mentioned.

CHARLES K. WETTER,
Commissioner.

And at the same time and place, also appeared before me, James Penny, to me well known, and of lawful age, and being by me first duly sworn to testify the truth touching the matters in controversy aforesaid, did depose and say:

I reside in Sevier county, Arkansas, and have resided there for near ten years. I am Sheriff of said county. I am very well acquainted with Andrew Hemphill, and have known him ever since I have resided in Sevier county. I have often been in the neighborhood, where said Hemphill resides, and I know what is his general character for truth and veracity, in his neighborhood. I would rely upon and take his word as soon as I would that of any man, and I would have no hesitation in believing him on oath.

JAS. PENNY.

Sworn to and subscribed before me, the day and year in the caption mentioned.

CHAS. K. WETTER,
Commissioner.

And at the same time and place, also appeared before me, Dr. Benj. P. Jett, to me well known, of lawful age, and being by me

first duly sworn to testify the truth touching the matters in controversy, between the parties aforesaid, did on his oath depose and say:

I reside in Washington, Hempstead county, Arkansas, and have resided in said place near twenty years. I am well acquainted with Andrew Hemphill, and have known him for that length of time. I have had sundry dealings with him and have always found him fair, perfectly straight, in his dealings. I have heard a good many hard things of him, but for my part I have no reason to question his truth and veracity, and would therefore believe him on oath.

BENJ. P. JETT.

Sworn to and subscribed before me, the day and year in the caption written.

CHAS. K. WETTER,
Commissioner.

And at the same time and place, also appeared before me Simon T. Sanders, of lawful age, and to me well known, and being by me duly sworn to testify the truth touching the matters in controversy between the parties aforesaid, did on his oath depose and say:

I am acquainted with Andrew Hemphill, and have known him about nine years. I would believe him on oath. I am clerk of the Hempstead Circuit Court, and have been for near ten years.

J. T. SANDERS.

Sworn to and subscribed before me, the day and year in the caption above written.

CHAS. K. WETTER,
Commissioner.

And at the same time and place, also appeared before me, Dr. John S. Burt, to me well known, of lawful age, and being by me sworn to testify the truth touching the matters in controversy aforesaid, did on his oath depose—

I am a physician, and reside in Washington, in the county and State aforesaid. I formerly resided in Sevier county, Arkansas. I am well acquainted with Andrew Hemphill, I have lived in the same county with him for some time, and have been in said Hemphill's neighborhood. I have never heard his character for truth and

veracity impeached, in the section where he resides, I would believe him on oath almost as soon as I would any man in Sevier county.

JOHN J. BURT.

Sworn to and subscribed before me, the day and year in the caption written.

CHAS. K. WETTERS,
Commissioner.

And at the same time and place, also appeared before me, Samuel Moore, who is to me well known, and of lawful age, and being by me first duly sworn to testify the truth touching the matters in controversy between the parties aforesaid, and on his oath depose and say:

I am an attorney at law, and reside in Washington, Hempstead county, Arkansas, and have resided in said town and county, ever since the year 1836. I am acquainted with Andrew Hemphill, and have known him for eleven or twelve years. I do not recollect that I ever heard anything against his character for truth and veracity in the general sense of the term. He is a shrewd sharp trader. From my general knowledge of his character for truth, I would believe him on oath.

SAM'L. MOORE.

Sworn to and subscribed before me, the day and year in the caption hereof written.

CHAS. K. WETTER,
Commr.

And at the same time and place also appeared before me, ——, to me well known, of lawful age, and being by me first duly sworn to testify the truth, touching the matters in controversy between the parties aforesaid, did on his oath depose and say:

I am an Attorney at Law and Receiver of Public Moneys in the town of Washington, Arkansas, where I have resided for near ten years. I am well acquainted with Andrew Hemphill, and have known him for six or seven years; I had various dealings with him during that time. He has always acted fairly and honestly with me, and from my own knowledge of him, should certainly believe him on oath.

(*Cross-Examined by Garland's Attorney.*)

Question. What is his general character?

Answer. As far as his character is concerned, I have heard many persons say that he is not a good man. Yet I never heard a person who had business transactions with him say aught against him, as a correct, honest and upright man.

B. F. HEMPSTEAD.

Sworn to and subscribed before me, the day and year in the caption hereof written.

CHARLES K. WETTER,
Commissioner.

And at the same time and place also personally appeared before me, James S. McLaughlin, to me well known, and being by me first duly sworn, stated and deposed as follows:

I reside in Clark County, Arkansas, and have resided in the State of Arkansas, 33 years. I am acquainted with Andrew Hemphill as well as men get to be, I have known him about 33 years. If he is not a man of truth, I have never found it out. I have had great many dealings with him and have always found him correct, honest and truthful in his dealings. I would believe him on his oath as soon as I would any man with whom I am acquainted.

JAMES S. McLAUGHLIN.

Sworn to and subscribed, before me, this, day and year in the caption hereof written.

CHAS. K. WETTER.
Comm'r.

And at the same time and place also appeared before me, George Conway, to me well known of lawful age, and being by me first duly sworn to testify the truth, the whole truth and nothing but the truth, touching the matters in controversy between the parties aforesaid, did on his oath depose and say,

I reside in Hempstead County, Arkansas, and have resided in said county for twenty years, I have known Andrew Hemphill that long, I have been a lawyer for that length of time, and have had various dealings with him,—I have done law business for and against him, and have always found him correct and truthful, and I would believe him on oath, for I could have no ground on earth to doubt

his truth except from the rumors of others, but whether they are with or without foundation I do not know.

GEO. CONWAY.

Sworn to and subscribed before me, the day and date in the caption above written.

CHARLES K. WETTER,
Comm'r.

The said Josiah Garland by Thos. Hubbard, his attorney excepts to the foregoing depositions, and reserves all questions for the decision of the arbitrators.

Attest, CHAS. K. WETTER.

THE STATE OF ARKANSAS, *County of Hempstead,* } *S. Ct.*

I, Charles K. Wetter, as Commissioner, to take depositions between the parties aforesaid, do hereby certify that the foregoing depositions of Abraham Block, and others were taken before me, on the 17th day of November, A. D., 1849, in pursuance of the notice hereto annexed at the office of John Field, Esqr., in the town of Washington, in the County and State aforesaid, and that the statements of said deponents were reduced to writing, and by them signed respectively in my presence, and by them respectively sworn to, and that all of said deponents are residents of the State of Arkansas, and in the counties hereinbefore stated.

In testimony whereof, I do hereby set my hand as Commissioner at the place aforesaid, (viz, office of John Field,) this 17th day of November, A. D., 1849.

CHARLES K. WITTER,
Commissioner.

Endorsed. "Rec'd by mail, open by me, Dec, 1849," Pike.

Deposition taken on part of complainant in pursuance of notice and commission, on the 22d and 23d days of December, 1847, all of which appear in words and figures following, to wit:

JOSIAH GARLAND, ESQ.,

Sir:

Take notice that I will attend at the office of John W. Cocke, at the town of Washington, in the County of Hempstead, in the State of Arkansas, on the 22d day of December, inst., between the hours of 8 o'clock, A. M., and 6 o'clock, P. M., of said day, then and there to take the depositions of witnesses to be read in evidence in

my behalf, on the trial of a certain suit now pending in the Circuit Court, of the County of Lafayette, in the State of Arkansas, and on the Chancery side thereof, wherein I am complainant, and you are defendant, and that I shall continue from day to day, between the same hours of each day, until the same shall be completed, when and where you can attend.

WILLIAM WYNN.

COCKE, FIELD, and HIGHTOWER,
His Solicitors.

December 17th, 1847.

STATE OF ARKANSAS, *County of Lafayette.* } *S. Ct.*

LAFAYETTE CIRCUIT COURT,

On the Chancery side thereof, July Term, A. D. 1847.

WILLIAM WYNN, *vs.* JOSIAH GARLAND. } Injunction.

Came the parties by their respective solicitors, and on motion, and by consent, and agreement of parties here in open Court expressed, it is ordered that said complainant file his exceptions or replication to the answer of said defendant herein at least sixty days before the first day of the next term of this Court.

And by like consent and agreement, it is further ruled and ordered by the Court, that both of said parties have and leave is hereby granted unto each of them to take the depositions of witnesses generally, before any Judge or Justice of the peace of this State or of any of the States of the United States or Territories thereof to be read in evidence, either to sustain or dissolve the injunction granted him, or to be read in evidence upon the final hearing of this cause in like manner and with like effect, as if this cause had been regularly set down, for final hearing upon issues formed herein. A true copy from the record.

Attest,

JOHN D. JONES,
Clerk.

WILLIAM WYNN, *vs.* JOSIAH GARLAND, } Injunction.

To any Judge or Justice of the peace, of the State of Arkansas or of any of the United States, or Territories thereof, greeting:

Know ye, that we reposing confidence in your prudence and fidelity, do by these presents, give you authority diligently to examine all witnesses whatever that may be brought before you by William Wynn, in a certain suit now pending in our Circuit Court, in and for the county of Lafayette, and on the Chancery side thereof, in which the said William Wynn is complainant, and Josiah Garland is defendant.

Therefore we desire you at certain times and places by you to be appointed for that purpose, you cause the witnesses to come before you, and that you then and there examine them upon their corporal oaths first taken before you upon the Holy Evangelists; that you reduce their examination to writing, and when you shall so have taken them, that, you send the same with this commission closed up under your seal to us in our said Circuit Court, at the town of Louisville, in the county of Lafayette, aforesaid, without delay.

In testimony whereof I have hereunto set my hand as Clerk and officered the seal of said Court at office, this 18th day of December, in the year of our Lord, one thousand eight hundred and forty-seven, and in the 72d year of American Independence.

[SEAL.]

J. D. JONES,
Clerk.

The execution of the within Commission, appears by reference to the schedule hereto annexed.

Decr. 23d, A. D., 1847.

JOHN D. SMITH,
J. P.

Depositions of witnesses taken and subscribed before me, John D. Trimble, an acting Justice of the Peace, for the County of Hempstead, in the State of Arkansas, duly commissioned as such on the 22d day of December, A. D., 1847, between the hours of 9 o'clock, A. M., and 3 o'clock, P. M., of said day at the law office of John W. Cocke, in the town of Washington, in the County of Hempstead, and State of Arkansas in pursuance of a commission hereto attached, and to be read as evidence in a certain cause now pending in the Circuit Court of Lafayette county, in the State of Arkansas, on the Chancery side thereof, wherein William Wynn is complainant, and Josiah Garland is defendant, on the part of the complainant.

James McLaughlin, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn, to testify the truth, the whole truth and noth-

ing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there on his oath aforesaid, depose as follows, viz:

Question 1. What is your age and place of residence, and how long have you resided where you now reside?

Answer. I am sixty-six years old according to the record of my father, and I reside in the county of Clark, Arkansas, and have lived in said county about twenty-five years, and in the State of Arkansas about thirty years.

Question 2. Are you acquainted with the parties to this suit, if so, how long have you known them.

Answer. I am acquainted with the parties to this suit. I have known the complainant some five or six years, and have but a slight acquaintance with the defendant.

Question 3. If you ever resided in the county of Lafayette, in the state of Arkansas, state when you so resided there, and at what particular point or points did you so reside, and how long you so resided, and what you then and there followed?

Answer. I resided on what was called Old River, in Lafayette county, Arkansas, about a mile and a half from the cut-off, and followed farming for a livelihood, and resided there I think three years. I moved to Fisher's prairie early in 1829, and lived there on the bank of Red river during that year, and cultivated the farm known as the Knowling place, and overseed for Phillip Duty on this place in 1829. In the fore part of 1830, I overseed for Andrew Hemphill, commencing I think in February in that year. I attended to ginning out his cotton near to where I lived. He then instructed me to go to his mother's, and to take charge of the houses and farm there, which I did. This was probably in March of the same year. I attended to the hands of Mrs. Hemphill until July or August of that year.

Question 4. You speak of Andrew Hemphill and Mrs. Hemphill. State if they lived together at the time you speak of, or did each have a separate farm, and who was this Mrs. Hemphill, and if she had any sons and daughters living with her at the time you mention, please state their names?

Answer. Andrew Hemphill and Mrs. Hemphill, (who was his mother,) each had separate farms; whether the farm that I attended to was a partnership farm, I do not know, but it is more than likely than it was. Mrs. Hemphill had three sons. Their names are Samuel Hemphill, John L. Hemphill, and James B. Hemphill, and four with Andrew Hemphill, one of them was a constant member of her family, and the other two went and came as they might feel inclined to do so. The one that lived with her constantly, was James B. Hemphill. Samuel and John L. went and came as their humor might prompt them.

Question 5. Do you know whether William Hemphill was the

head of the family in 1829 and 1830, and managed and directed all things pertaining to the farm; please state?

Answer. I always recognized her as the head of the family, at those times. I have no knowledge of any other head. As far as I had any knowledge, she managed and directed everything about the farm in those years; but with the former overseer and myself.

Question 6. What did Samuel Hemphill follow in the year 1829 and 1830. Was he managing or controlling the affairs of Mrs. Hemphill's, (his mother's) farm or otherwise; state fully?

Answer. As to anything he followed, I am not able to state. He was very seldom there when I was there. He would sometimes come out into the field and scrape a row of cotton. He did not manage or cultivate the farm any more than the other boys, none of them pretended to control it, that I know of.

Question 7. Did or did not Samuel Hemphill cultivate any land on Fisher's Prairie, in the County of Lafayette in the State of Arkansas, in 1828. If so, state what land he cultivated?

Answer. He had no control of Mrs. Hemphill's farm, in 1829. But I lived within half a mile of her during that year. I have no knowledge of her and her sons cultivating any land in 1829, other than that which was cultivated by Mrs. Hemphill, in 1830, when I acted as her overseer.

Question 8. Do you not know whether said Samuel Hemphill cultivated any other land in either of those years, save that on which his mother, Mrs. Hemphill, resided in those years. If so, state whether he cultivated any separate and apart from her, and what it was, and whether or not all the land cultivated or on which he may have worked, or made improvements during those years, was not so done by him, as a member of his mother's family, and under her authority or control, and not for himself individually?

Answer. I think he did not—I have no knowledge of any other land that was cultivated, only that on which his mother lived in those years. He did not to my knowledge cultivate any separate and apart from that cultivated by his mother. If he cultivated or improved any other land in Fisher's Prairie, in those years I think I should have known it, as I lived in said prairie both of those years. He worked on the land on which his mother resided in those years, as a member of his mother's family. I had no knowledge of his having any authority over, or control of the place where his mother resided, but what he did he did voluntarily. I took it as such. She did not seem to have any control over him, nor did I.

Question 9. While you resided in Fisher's Prairie, did said Samuel Hemphill have any other house than with his mother?

Answer. He had no other house. His washing was done there and his board when he attended to it. If he had had any other place of abode in said prairie, I certainly should have known it.

Question 10. You speak of being a resident of Fisher's Prairie, in 1829 and 1830, please state who resided and had improvements in that prairie in those years?

Answer. Morgan Crye, old M. Petman, Mrs. Hemphill, Massach H. Janes, and P. D. Nouland. These are all I recollect of, Bryant Harris also lived there.

Question 11. As you lived with and did business for Mrs. Hemphill, will you please state if you know what particular section she lived in and had improvements, in 1829 and 1830; and whether you have been to Fisher's Prairie lately, and whether you have examined the surveys and the old land marks, and if you saw the lines run by a surveyor, if so, by whom, and who was present?

Answer. Agreeable to the lines shown to me by Mr. James P. Jett, who had his surveying instruments and run *and run* out the lines as originally run by the Government Surveyor, which was the N. W. ¼ of sec. 17 in T. 16, in R. 25 W., and upon this tract of land, Mrs. Hemphill cultivated a farm in the years 1829 and 1830, and her farm extended to no other tract that I ever knew or heard of. I was at Fisher's Prairie, in October of the present year, and it was at that time that James P. Jett run the lines. Andrew Hemphill, Samuel Hemphill, Col. Wynn, and Mr. Edwards were present. I was called on to examine the old land marks, which to all appearances were those made at the time of surveying by the Government. I found where the well of Mrs. Hemphill was at the time I lived with her, but could not directly trace the fence rows, but I was called on to point out the direction, which I did, and was told that I was not 20 feet off the line, by those who knew of moving the fence. The old fence on the West side of the farm running North and South, was the fence that I examined and pointed out, and have no hesitancy in saying that it was East of the line between secs. 17 and 18, in T. 16, R. 25 W. James P. Jett run the North and South line between those sections. I think, from the best of my recollection, that Mrs. Hemphill's fence lacked about 100 yards of coming to this line. I thought her West string of fence run about 40 yards from her house and well, North and South, and the quarter section on which she resided and cultivated extended West something like 20 rods beyond her fence West, running North and South.

Question 12. Who now resides on the quarter section of which you have just spoken, or who has it on cultivation?

Answer. I am unable to state of my own knowledge, but was told that Josiah Garland was cultivating it, and I found it highly improved. I noticed the fences around this tract, and found that they took in more land than was originally inclosed by Mrs. Hemphill's fence. There is a fence on the west side of the tract, running north and south, parallel with the line dividing sec. 17 and 18. I am satisfied from observing the ground, that this fence is about 20 rods west of Mrs. Hemphill's old fence.

Question 13. You have stated that Massach Janes resided in Fisher's prairie in 1829 and 1830, you will please state upon what quarter section he resided, and whether any other person than said

Janes at that time cultivated any portion of the land enclosed in the said quarter section?

Answer. Massach Janes to my knowledge, in the 2 years, 1829 and 1830, resided upon the N. E. ¼ of sec. 18 in T. 16 S. of R. 25 west. No one could have cultivated any portion of said quarter but said Janes in those years, unless perhaps Widow Jacob's improvement may have reached it, her improvement being on the west side of said quarter, and I did not trace the line on that side so as to enable me to state positively. This statement as to the quarter section upon which said Janes resides, is based upon a survey made by James P. Jett, and that Massach Janes, in said years, was the nearest neighbor to Mrs. Hemphill on the west side.

Question 14. Did Samuel Hemphill reside upon or cultivate and improve any part of the N. E. ¼ of sec. 18 in T. 16, S. of R. west, above mentioned, in the years 1829 and 1830, or either of those years?

Answer. I am confident he did not either reside upon, cultivate or improve any part of said quarter section those years, or I believe I should have known it, and if he did it could only have been a Tomahawk improvement, but I don't think he did that.

Question. What improvement did Massach Janes make, on said quarter section, if any?

Answer. He had a pretty large cotton field and corn field in cultivation, I do not know how many acres. He had what in those days was called a pretty comfortable dwelling house, out houses, stable, &c. &c., and an apple and peach orchard.

Question. Who resides on said last mentioned quarter section, and what is its present condition in the way of improvements, state particularly.

Answer. The complainant was residing on, and cultivating it in the month of October, 1847, when I was there, there are more improvements on it at present than there were when said Janes resided thereon. There is a gin and other houses, besides a new dwelling house, not yet finished, which is rather a splendid building.

(*Cross-examined by Defendant.*)

Question. How many hands did Mrs. Hemphill work on the plantation in Fisher's prairie in 1829 and 1830?

Answer. I do not know how many in 1829, but in 1830 she had six beside myself, black and white.

Question. What was the form of the field?

Answer. It was much longer than wide, and extended north and south the long way.

Question. In what part of the field was the house situated?

Answer. Pretty well in the north east corner.

Question. What direction did the said farm run on the north

side of the field running west, and would it run north or south of the complainant's new house.

Answer. It would run on the south side of his house, but how far I am unable to say.

Question. Were there any mounds in the field that you cultivated, and was there a long mound near the south side of the field?

Answer. I do not recollect of any large mound, but there were several small ones about in the field.

Question. Were you acquainted with field when Philip Duty owned it, and whether the fence was enlarged on the west before it was sold to the Hemphills?

Answer. I passed it frequently, but was never over it. I think the Hemphills added some ground to this field. There was as much opened land in the field as the hands of Mrs. Hemphill could cultivate. About sixty acres open as well as I can recollect.

Question. Was all the ground in the field cultivated?

Answer. If there was any left out I have forgotten it.

Question. In what direction is the well from the old house, formerly occupied by Mrs. Hemphill, and what is the distance?

Answer. I think the well is more west than north, from the old house, and the distance about fifty feet.

Question. Was there any covering around the well?

Answer. I think nothing more than a little box around the top of it.

Question. What other means beside the well, had you of ascertaining where the house stood?

Answer. A certain pond where they used to wash at, a little south of south east, from the house.

Question. How much longer than wide was the field?

Answer. I cannot state certainly, but I think at least as long again as wide. There was a cotton field on the north, of near 25 acres, and a corn field of near 40 acres, which extended to near Morgan Cryer's, the cotton extended clear across the field on the north.

Question. At what point did you begin to run the lines with Mr. Jett.

Answer. At the north west corner of Sec. 17, and the N. E. corner of Sec. 18, in T. 16, R. 25 West.

Question. Did you examine any other section corners except those?

Answer. I did not.

Question. Had you examined that field, the well, &c., from 1830, until you went there in October, 1847.

Answer. I never examined it particularly, in 1843 I rode by it and recognized the place.

Question. In what year did Andrew Hemphill move to Fisher's prairie?

Answer. In 1829, as well as I can remember.

Question. Was there any ground east of the house in cultivation in farm?

Answer. Very little. None in the farm. The negroes had a little piece in cotton.

Question. When you was there in October last, did you make any measurement from where the old house stood in 1830, west to where you suppose the old fence stood?

Answer. I did not, but suppose it to be about 40 rods, and about 20 rods from the place of the old fence to section line of sections 17 & 18.

Re-Examined by Complainant.

Question. You say you made no measurement of the ground from where the old house of Mrs. Hemphill stood to the road of fence on the west of her field. State why you did not measure it, or were you sufficiently acquainted with the ground to judge with accuracy as to where said fence stood, or was it from the want of time?

Answer. I relied on my own judgment. I thought I knew where the old fence stood, and that is the reason I did not measure it.

Question. You say you were only at one corner with James P. Jett.in October. Did you or not follow him in running the north and south line from the corner where you started, to the corner of the S. E. ¼ of Sec. 18, and the S. W. corner of Sec. 17, in the township aforesaid.

Answer. We traced or run the line one half mile, running from north to south.

Question. You speak of the number of acres cultivated by Mrs. Hemphill in 1829 & 1830, and the number of hands that were on the place in the latter year. State if you ever measured the land cultivated by her in those years, and is it your judgment and opinion merely, and what kinds of hands were those six you mentioned her having in 1830?

Answer. As to the number of acres cultivated by Mrs. Hemphill, I speak only from opinion. I never measured nor saw it measured, she had 5 black hands, one boy about 15 years old, 2 girls about 16 or 18 an old, and an old woman 50. One of the girls were generally in the house, and nearly blind. I stated she had five black ones, but upon reflection I recollect she had six, and then there was a white boy of about 14 or 15 years old.

JAS. S. McLAUGHLIN.

Sworn to and subscribed before me, this 22d day of Dec., A. D. 1848.

JOHN D. TRIMBLE, *J. P.*

There not being sufficient time to complete the depositions, the further taking thereof is adjourned until to-morrow morning at 8 o'clock.

Attest, JOHN D. TRIMBLE.
J. P.

Thursday Morning, ten o'clock, Dec., 23d, A. D., 1847.

The parties appeared at the time and place in the caption hereto mentioned, and the complainant having no farther testimony to take, the further taking of the same is closed.

Attest,
JOHN D. TRIMBLE,
J. P.

Hempstead County, S. Ct.

I, John D. Tremble, an acting and duly commissioned Justice of the Peace, in and for the County of Hempstead, in the State of Arkansas, do hereby certify that the foregoing depositions of James McLaughlin, was taken before me, on the 22d day of December, A. D., 1847, between the hours and at the place in the caption hereof mentioned, that the examinations, responses and statements of said deponents were reduced to writing in my presence, and by the said deponent sworn to and subscribed in my presence, at the time and place aforesaid; and that said deponent is a resident of the County Clark, in the state aforesaid.

In testimony whereof I do hereunto set my hand as such Justice as aforesaid, at Washington, in the County and State aforesaid, on this 23d day of December, A. D., 1847.

JOHN D. TRIMBLE,
J. P.

Costs, to wit:

James S. McLaughlin, witness, 1 day's attendance,	$1 00
90 miles travel,	4 50
	$5 50
Justice Trimble, for taking and certifying depositions,	$2 00
	$7 50

The above has been paid, Col. Wynn, the complainant.

JOHN D. TRIMBLE,
J. P.

Opened and published by order of Court, April 30, 1849.

A. BYRNE,
Clerk.

Depositions taken on the part of complainant, on the 27th day of April, 1849, in pursuance of notice and commission, all which appear in words and figures following, to wit:

To JOSIAH GARLAND, ESQR.

Take notice that I will attend at the law office of Conway and Young, Esqrs., in the town of Lewisville, in the County of Lafayette, and State of Arkansas, on the 27th day of April, (instant,) A. D., 1849, and will then and there, between the hours of 8 o'clock in the forenoon, and 6 o'clock in the afternoon of said day, take the depositions of witnesses to be read as evidence in my behalf, on the final hearing of a certain cause, now depending in the Circuit Court, in and for the County of Lafayette, in the State of Arkansas, on the chancery side thereof, wherein I am complainant, and you are defendant, and I will continue taking said depositions on the 28th day of said month of April, A. D., 1849, between the hours above specified, of said day, till all are taken, at which time and place you can attend if you think proper.

This, the 12th day of April, A. D., 1849.

WILLIAM WYNN.

I executed the within notice on the within named Josiah Garland, on the 16th day of April, A. D., 1849, by delivering to the said Garland, a true and perfect copy of the same,—this the 16th of April, A. D., 1849.

W. P. CRYER,
Sheriff.

Service 50 cents.

STATE OF ARKANSAS, }
County of Lafayette. } *ss.*

IN THE LAFAYETTE CIRCUIT COURT,

On the Chancery side thereof, January the sixth, A. D. 1848.

WILLIAM WYNN, Complainant,
vs.
JOSIAH GARLAND, Defendant. } In Chancery.

At this day came said parties by their solicitors, and on motion it is ruled and ordered that they have, and leave is hereby granted unto them to take the depositions of witnesses generally, before any Judge or Justice of the Peace, in any of the States of the United

States, or any of the Territories thereof, to be read in evidence on the final hearing of this cause, and that a commission issue for that purpose.

A true copy from the record.

Attest, A. BYRNE,
Clerk.

THE STATE OF ARKANSAS.

To any Judge or Justice of the Peace, in any of the United States or Territories thereof, greeting:

Know ye that we reposing confidence in your prudence and fidelity, do by these presents give you authority diligently to examine all witnesses who may come before you in a certain suit now pending in our Circuit Court, on the Chancery side thereof, in and for the County of Lafayette, in which William Wynn is complainant, and Josiah Garland is defendant.

Therefore we do desire you that at such times and places, as shall be named to you for that purpose, you cause the said witnesses to come before you and that you then and there examine them upon their respectful corporal oaths first taken before you; that you reduce their examinations to writing, and when you shall so have taken them, that you send the same with this commission closed up under your seal to us in our said Circuit Court in Lewisville, without delay.

Witness: I, Alexander Byrne, Clerk of said Court, and the seal of said Court, this 25th day of April, A. D., 1849, and of the State the thirteenth year.

[SEAL.] A. BYRNE,
Clerk.

Execution of this commission appears by the schedule hereto annexed.

CHARLES E. McCUTCHEM,
J. P.

Depositions of witnesses taken and subscribed before me, Charles E. McCutchem, an acting Justice of the Peace for the County of Lafayette, in the State of Arkansas, duly commissioned as such, on the 27th day of April, A. D., 1849, between the hours of 8 o'clock in the forenoon, and six o'clock in the afternoon of said day, at the law office of Conway & Young, Esqrs., in the town of Lewisville, in the County of Lafayette and State of Arkansas, in pursuance of a commission hereto annexed, and to be read as evidence in a certain cause now depending in the Circuit Court of the County of Lafayette, in the State of Arkansas on the Chancery side thereof, wherein

William Wynn is complainant, and Josiah Garland is defendant, on the part of the complainant.

James S. Conway, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn, to testify the truth, the whole truth and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there on his oath aforesaid, depose as follows, to wit:

In the latter part of April or fore part of May, 1838, I was called on by William Wynn, of Fisher's prairie, to survey a line between lands claimed by himself and Josiah Garland, and adjoining to said prairie, and being informed, at the time, by the said Wynn, that I had been appointed by the Court to survey said line, I proceeded to do so, within the time above stated. The precise date is not now recollected, but the work was executed on a day which said Wynn had previously appointed for it to be done, and he informed me that the said Garland had been notified accordingly. Col. Wynn furnished a compass and chain to be used in making said survey, both of which were of excellent quality. With the chain carefully measured, and of the proper length, and the compass adjusted to the variation of 70° 3′, which is the variation at which the public surveys in the vicinity were made, I proceeded to make said survey. John Waggoner and James P. Jett carrying the chain, beginning at the corners of secs. 7, 8, 17 and 18 of T. 16 S. of R. 25 W. (as nearly as could ascertain the same without notes of the original survey,) from thence run south between said sections 17 and 18, at 40 chains or one half mile, set a stake in the lane between the fields of the said Wynn and Garland, where said survey terminated, said stake being some feet to the west of the centre of said lane, and the measurement some eight or ten feet short of a stake pointed out to me as the result of a former survey of said line made by James P. Jett. In making this survey, I used every effort to make it correctly.—The evening on which it was made was cloudy and misting with rain, and in the timbered portion of the survey short sights or stations were necessarily taken in consequence the darkness of the evening, and it is possible that in consequence of the numerous sights or stations, which were taken, that said survey may vary a few feet from the position of the true line, but I am of opinion that it does not. The chainmen seemed to me to understand the business of carrying the chain, and I had full confidence in their measurement having been made correctly. And further this deponent saith not.

J. S. CONWAY.

I Charles E. McCutchem, an acting and duly commissioned Justice of the Peace in and for the county of Lafayette, in the state of Arkansas, do hereby certify and make known that the foregoing deposition of James S. Conway was taken before me on the 27th

day of April, A. D., 1849, between the hours and at the place in the caption hereof above mentioned, that the statements of the said deponent without any examination were reduced to writing in my presence and by the said deponent, sworn to and subscribed in my presence, at the time and place aforesaid, and that said deponent is a resident of the county of Lafayette, in the state of Arkansas.

In testimony whereof, I, Charles E. McCutchem, a Justice of the Peace, do hereunto set my hand, at the law office of Conway and Young, in the town Lewisville, in county of Lafayette, in the state of Arkansas, the 27th day of April, A. D., 1849.

CHARLES E. McCUTCHEM,
J. P.

Opened and published by order of Court, April 30, 1849.

A. BYRNE,
Clerk.

Deposition taken before James K. Young, commissioner for the purpose appointed, appears in word and figures following, to wit:

To JOSIAH GARLAND, ESQR.,

Take notice that in pursuance of the instructions of Albert Pike and James M. Curran, Esqrs., to whom the several matters in controversy and suit between us, have been submitted. I will attend at the office of Conway and Young, in the town of Lewisville, in the county of Lafayette, in the state of Arkansas, on the 29th day of the present month, and will then and there, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon of said day, take the depositions of witnesses to read in evidence in my behalf in the several matters in suit and controversy, and to be arbitrated and determined by said Pike and Curran, and I will attend from day to day till all are taken. Said depositions to be taken before James K. Young and James H. Caruthers, or either of them.

WILLIAM WYNN.

Sept. 24th, 1849.

By JOHN FIELD,
His Attorney.

JAMES K. YOUNG,
Commissioner.

STATE OF ARKANSAS, }
County of Lafayette, } *S. Ct.*

I, John S. French, a citizen of the county of Lafayette, in the state of Arkansas, do solemnly swear that I executed the within notice on the within named Josiah Garland, Esq., on the 25th day of

September, (inst.,) 1849, by going to his residence in said county of Lafayette, Arks., and by then and there delivering to him a true and perfect copy of said within notice.

JOHN J. FRENCH.

Sworn to and subscribed before, Charles E. McCutchem, an acting Justice of the Peace, in and for the said county of Lafayette, in the state of Arkansas, on this the 27th day of September, A. D., 1849.

C. E. McCUTCHEM,
J. P.

Depositions of witnesses taken and subscribed before me, James K. Young, on the 29th day of September, A. D., 1849, between the hours of 8 o'clock in the forenoon and six o'clock, in the afternoon of said day, at the office of Conway and Young, in the town of Lewisville, in the county of Lafayette, in the state of Arkansas, in pursuance of an order of the Circuit Court in and for the county of Lafayette, in the state of Arkansas, made on the 20th day of May, A. D. 1849, appointing me, the said James K. Young, Commissioner to take depositions to be used and read in all matters in suit and controversy between William Wynn and Josiah Garland, before Albert Pike and James M. Curran, to whom was referred on the 20th day of May, A. D., 1849, by agreement between the said parties all matters in suit between them to be arbitrated and determined, in some of which William Wynn is plaintiff or complainant, and Josiah Garland is defendant, and in others Josiah Garland is plaintiff, and William Wynn is defendant, which depositions are to be read in evidence before the said arbitrators in said suits and matters in controversy so submitted to them, on the part of William Wynn. Alexander Byrne, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn to testify the truth, the whole truth and nothing but the truth in regard to the matters in controversy in the suits aforesaid, did then and there, on his oath aforesaid, depose as follows, to wit:

Interrogatory. State whether you are or are not personally acquainted with William Wynn and Josiah Garland?

To 1st interrogatory witness answers, that he is personally acquainted with said Wynn and Garland.

2d interrogatory. You say you are acquainted with said Josiah Garland. State whether you have ever seen him write, and if so, whether more than once, and whether you are acquainted with his hand writing from having seen him write?

To 2d interrogatory witness answers, that he has seen Josiah Garland write his name several times.

3d interrogatory. Look at paper marked Exhibit "A." hereto annexed, and state if you can, whose hand writing it is?

To 3d interrogatory witness answers, that he does not know whose hand writing the paper marked Exibit "A." is in, but he believes the signature to said paper, is the signature of Josiah Garland and further this deponent saith not.

A. BYRNE.

And at the same time and place before me also appeared Lewis B. Fort, a witness known to me to be of lawful age, and being by me first duly sworn to testify the truth, the whole truth and nothing but the truth in regard to the matters in controversy in the suit aforesaid, did then and there on his oath aforesaid, depose as follows, to wit:

1st interrogatory. State whether you are personally acquainted with William Wynn and Josiah Garland?

To 1st interrogatory witness answers. He is.

2d interrogatory. You say you are personally acquainted with Josiah Garland. State whether you have ever seen him write, and if so, whether more than once, and whether you are acquainted with his hand writing from having seen him write?

To 2d interrogatory witness answers, that he has frequently seen Josiah Garland write, and is acquainted with his genuine signature from having seen him write it.

3d interrogatory. Look at paper marked Exhibit "A.," hereunto annexed, and state if you can whose hand writing it is?

To 3d interrogatory. He has examined paper marked Exhibit, "A." and believes the signature to it to be the genuine signature of Josiah Garland, and further this deponent saith not.

LEWIS B. FORT.

STATE OF ARKANSAS, *County of Lafayette.* } *S. Ct.*

I, James K. Young, Commissioner in and for the said County of Lafayette, to take depositions in the the several suits or actions between William and Josiah Garland, now referred to Albert Pike and James M. Curran, Esqrs., to arbitrate and determine as is above stated in the caption hereof, do hereby certify and make known that the foregoing depositions of A. Byrne and Lewis B. Fort, were taken before me, on the 29th day of September, A. D., 1849, between the hours and at the place in the caption hereof above mentioned; that the examinations, responses, and statements of each of said deponents were reduced to writing in my presence, and by the said deponents respectively sworn to and subscribed in my presence, at the time and place aforesaid, and that said deponents, are residents of the County of Lafayette, in the State of Arkansas.

In testimony whereof I, James K. Young, Commissioner as afore-

said, do hereunto set my hand at the office of Conway and Young, in the town of Lewisville, in the County of Lafayette, in the State of Arkansas, on this the 1st day of October, A. D., 1849.

JAMES K. YOUNG,
Commissioner.

Witnesses fees $2.

Received by mail, opend by me, March 9, 1850.

PIKE.

Exhibit "A," referred to in the foregoing depositions, appear in words and figures following, to wit:

SECLURA, *February* 10*th*, 1845.

COL. WILLIAM WYNN,

Sir:

Your note of the first inst., has been received and its contents particularly observed. You forbid me from cultivating or trespassing upon your land of So. side of Red River, in the County of Lafayette, Arkansas, particularly sections and fractional sec. 7, 8, 19, 18, 20, in T. 16 S., R. 25 W. In reply I have only to observe, that so far as your pre-emption extends within my enclosure to the S. E. ¼ of sec. 18, proved up by Massach Janes, and so far as the N. W. ¼ of sec. 20 extends within my enclosure, proved up by Morgan Cryer, I am ready any time to surrender up to you, and you can take possession of. So far as sec. 7 is concerned, I forewarn you from trespassing upon E. ½ of the S. E. and N. E. qrs., and all of fractional section 8. As to the N. E. ¼ sec. 18, I forbid you cultivating or in any wise injuring the houses, or using the mill or gin, or any of the other improvements of any nature whatever. They are mine, and I forbid it. Also the E. ½ of the N. E. ¼ sec. 19, I forbid you from cultivating or trespassing thereupon. Also the N. E. fractional ¼ of sec. 20, I forbid you trespassing upon, in any way whatever. All of the above lands are in T. 16 S., R. 25 West, South Red River.

Respectfully, I am, &c.

J. GARLAND.

Addressed, "Col. William Wynn, Fisher's Prairie, Ark." And endorsed by the commissioner as follows:

Exhibit "A," this is paper marked Exhibit "A," referred to in the depositions hereto annexed of Lewis B. Fort.

A. BYRNE,

JAMES K. YOUNG,
Commissioner.

(*Depositions on part of Defendant.*)

Depositions taken on part of defendant on the 27th day of December, 1847, appear in words and figures following, to wit—

To WILLIAM WYNN, ESQR.

Take notice that by virtue of a commission issued from the office of the Lafayette Circuit Court, in a cause pending in said Court on the Chancery side thereof, wherein you are complainant, and I am defendant, I shall attend at the law office of Messrs. Hubbard & Hempstead, in the town of Washington, in Hempstead county, on Monday, the 27th day of December, 1847, between the hours of 9 o'clock in the forenoon, and 6 o'clock in the afternoon of said day to take the depositions of witnesses to be read in evidence on the hearing of said cause, and shall continue from day to day, between the same hours of each day, until the same shall be completed, where you can attend, &c.

J. GARLAND.

Decr. 18th, 1847.

I do hereby certify that I executed the within notice on William Wynn, on Fisher's prairie, at his residence in Lafayette county, Arkansas, by leaving a true copy of the aforesaid notice in the presence of Richard W. Wynn, son of the aforesaid William Wynn, on 20th day of Decr., 1847.

26 miles cer 3 cts. per mile, - - - -	78
Serving notice, - - - - - - -	50
	$1 28

A. C. OWEN,
Sheriff.

By WILLIAM GRANT,
Deputy.

STATE OF ARKANSAS, *County of Lafayette* } *S. Ct.*

LAFAYETTE CIRCUIT COURT,
July Term, A. D. 1847.

WILLIAM WYNN, *vs.* JOSIAH GARLAND. } Injunction.

Came the parties by their respective solicitors, and on motion, and by consent and agreement of parties here, in open Court ex-

pressed, it is ordered that said complainant file his exceptions or replication to the answer of said defendant, herein at least sixty days before the first day of the next term of this Court, and by like consent and agreement it is further ordered and ruled by the Court, that both of said parties have, and leave is hereby granted unto each of them to take depositions of witnesses generally, before any Judge or Justice of the Peace, of this State or of any State in the United States or Territories thereof, to be read in evidence, either to sustain or dissolve the injunction granted herein, or to be read in evidence upon the final hearing of this cause, in like manner, and with the like effect, as if this cause had been regularly set down for final hearing upon issues joined therein.

A true copy from the record.

Attest,

J. D. JONES,
Clerk.

STATE OF ARKANSAS, *County of Lafayette.*

To any Judge or Justice of the Peace, in either of the United States or Territories, greeting:

WILLIAM WYNN,
vs.
JOSIAH GARLAND.

Know ye, that we reposing confidence and fidelity, do by these presents, give you authority diligently to examine all witnesses whatever, which may be produced in a certain suit now pending in our Circuit Court, in and for the County of Lafayette, and State of Arkansas, on the Chancery side thereof, in which William Wynn is complainant, and Josiah Garland is defendant.

Therefore we desire you, that at certain times and places by you to be appointed for that purpose you cause the witnesses to come before you, and that you then and there examine them upon their corporal oaths first taken before you upon the Holy Evangelist's that you reduce their examination to writing, and when you shall so have taken them, that you send the same with this commission closed up under your seal to us, in our said Circuit Court, at the town of Lewisville, without delay.

[SEAL.]

In testimony whereof I have hereunto set my hand as Clerk, and officered the seal of said Court at office, this 23d day of December, in the year of our Lord, one thousand eight hundred and forty-seven, and in the 73d year of American Independence.

J. D. JONES,
Clerk.

The execution of this commission appears by reference to the schedule hereto annexed.

Test,

JOHN D. TRIMBLE,
J. P.

Depositions of witnesses taken and subscribed before me, John D. Trimble, an acting and duly commissioned Justice of the Peace, in and for the County of Hempstead, in the State of Arkansas, on the 27th day of December, A. D., 1847, between the hours of 6 o'clock, in the forenoon, and 6 o'clock, in the afternoon of said day, at the office of Hubbard & Hempstead, in the town of Washington, in the county of Hempstead, in the State of Arkansas, in pursuance of a commission hereto annexed and to be read as evidence in a certain cause now pending in the Circuit Court of the County of Lafayette, in the State of Arkansas, on the Chancery side thereof, wherein William Wynn is complainant, and Josiah Garland is defendant, in behalf of the defendant.

William Mass, a witness known to me to be of lawful age, being at the time and place aforesaid produced, and being by me first duly sworn to to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there on his oath aforesaid, depose as follows, to wit:

Question 1. What is your age, and where do you reside?

Answer. I am forty-three years of age and live in Washington, Arkansas?

Question 2d. Are you acquainted with Andrew Hemphill, and if so, how long have you known him?

Answer. I am acquainted with him and have known him about fifteen years.

Question 3d. What has been his character in the neighborhood where he resided. And if you are acquainted, say what that character is?

Answer. I cannot say that I am acquainted with his general character, where lives.

Question. Have you been intimately acquainted with him, and have you known his neighbors where he resides?

Answer. I cannot say that my acquaintance with him has been very intimate. I have had business transactions with him and am acquainted with most the persons living within five or ten miles of him.

Question 5. What is the general character of Andrew Hemphill, where he has resided during the time you have known him?

Answer. Those persons whom I have heard speak of him at all did not speak of him in very favorable terms, and did not give him a very good character.

Question 6. Can you state what is his character in the country where he is spoken of, and whether he is esteemed a correct honest man?

Answer. I believe he is looked upon by the most of persons whom I have heard speak of him, as being a cunning, artful, and a shrewd man, a little smarter than the common run of men in the country. His character, since I have known him, has not been that of a correct and honest man, but know nothing against him of my own knowledge.

To all the foregoing questions and answers, the complainant by his counsel excepts, and by agreement, he is to have the full benefit of said exceptions on the trial before the Chancellor.

(*Cross Examined by the Complainant.*)

Quest. You say you have heard some persons speak unfavorably of Andrew Hemphill, will you state who those persons are, and whether they are his friends?

Answer. I have heard Esquire Numenally speak unfavorably of him, also A. J. Armstrong, and Dr. O. S. Jones, and others that I do not no recollect, all in relation to the burning of the flat-boat, on Red River, but I think he has some neighbors who esteem him very highly. I am unable to say whether those persons who speak unfavorably of him, are his friends or not?

Question. How far do you reside from Andrew Hemphill?

Answer. I suppose between 40 and 50 miles.

Question. You say you have had dealings with said Hemphill. In those transactions, has he or has he not acted fairly and honestly, and whether those dealings were limited or extensive?

Answer. I have had pretty extensive dealings with him, and he never showed any dishonesty in his dealings with me.

The defendant by his counsel excepts to the entire questions and answers on the cross-examination and by consent he is to have the full benefit to said exceptions on the trial before the Chancellor.

(*Re-examined by Defendant.*)

Question. Do you mean to say that all you who heard speak unfavorably of Andrew Hemphill, spoke entirely with reference to the burning of the flat-boat, on Red River?

Answer. I mean those persons who spoke of him being in his immediate neighborhood.

Question. Have you or have you not heard others speak unfavorably of him who did not speak in relation to the burning of said flat-boat, and who are acquainted with him?

Answer. I have heard persons speak unfavorably of him before the boat was burnt, and by persons who knew him.

To the above and foregoing questions and answers put and

answered upon re-examination by said defendant, the complainant excepts, and by consent it is agreed that the said complainant shall have the benefit of his exceptions in the Circuit Court before the Chancellor.

WILLIAM MOSS.

Sworn to and subscribed before me, the undersigned Justice of the Peace, 27th Dec. 1847.

JOHN D. TRIMBLE,
J. P.

There not being time sufficient to complete the taking of depositions in this case the further taking is adjourned until to-morrow morning, 10 o'clock, A. M.

Test, JOHN D. TRIMBLE,
J. P.

Tuesday Morning, 28*th December*, 1847.

The taking of depositions was resumed, present both parties their attorneys.

Test, JOHN D. TRIMBLE,
J. P.

Matthew Moss, a witness to me known to me to be of lawful age, to me being produced and by me first duly sworn, deposed and says:

Question. What is your age, and where do you reside?

Answer. I am over twenty-one years of age, and reside in Washington, Hempstead County, Arkansas.

Quest. Do you know Andrew Hemphill, who resides in Sevier County, and if so, how long have you known him?

Answer. I knew Andrew Hemphill from fifteen to twenty years.

Quest. Where has he resided during the time you have known him?

Answer. I knew him while he lived in Lafayette county, and since that time he moved and settled in Sevier conty, Arkansas.—He may have lived a portion of the time in Clark county.

Question. Are you acquainted in the several neighborhoods and vicinities where he resided since you knew him?

Question. I am.

Question. What is or has been his general character as a good or bad man since your acquaintance with him in community where he has resided?

Answer. His general character has always been bad and is bad yet, since my acquaintance with him.

To all the foregoing examination and answers of Matthew Moss, the complainant excepts, and it is agreed he shall have the full benefit of his said exceptions on the trial at the Circuit Court, before the Chancellor.

MATTHEW MOSS.

Sworn to and subscribed before me, the undersigned Justice of the Peace, 28th Dec., 1847.

JOHN D. TRIMBLE,
J. P.

And at the same time and place came also Daniel F. Wetter, a witness well known to me to be of lawful age, being produced, and being by me first duly sworn, deposes and says:

Question. Who has acted as receiver of public moneys at the Land Office of the United States, at Washington, Arkansas, from 1840 up to this time?

Answer. I have, and no other person.

Question. Please state whether there was a pre-emption proved up before you and the Register of the Land Office, at Washington, Arkansas, by Samuel Hemphill for the benefit of the Defendant, Josiah Garland, on the N. E. ¼ of sec. 18 in T. 16 S. of R. 25 west?

Answer. Sam'l Hemphill proved a pre-emption before the Register and Receiver under the Act of 1830, on the N. E. ¼ of sec. 18 in T. 16, S. of R. 25 west, as appears from the books of my office, on the 19th February, 1843, but I am unable to say whether it was for the benefit of Josiah Garland or not. I believe however, it was the understanding that Garland was to have it.

Question. Can you state upon what testimony said pre-emption was established, or can you refer to documenns to this fact?

Answer. I am unable to say on whose testimony the pre-emption was granted, nor have I any documentary evidence before me, or in my possession going to show this fact.

Question. Was Jacob Waggoner sworn as a witness in relation to any pre-emption about that time, on lands in and about Fisher's prairie?

Answer. He was, I think, sworn in several cases in regard to pre-emptions in and about Fisher's prairie, once or more I am certain.

Question. Was any examination had from Waggoner in regard to his means of knowing precisely where the corners and lines were located on this particular tract of land?

Answer. I do not remember there was in this particular case, but it was an invariable rule with me to examine witnesses specially on this point.

Question. Have you been acquainted with Jacob Waggoner for any length of time?

Answer. I have known him upwards of twenty years.

Question. Is he considered literate or an illiterate man?

Answer. He is considered an illiterate man. I am not certain whether or not he can write.

Question. Do you know whether the affidavit made and subscribed by Jacob Waggoner was read to him at the time he made it in relation to the pre-emption before mentioned?

Answer. I am unable to state certainly in this case, whether it was read to him at the time or not. But it was a general rule adopted by me, and to which I remember no exceptions to read and explain fully the affidavit to the person making it in such cases, and I presume I did so in this instance.

Question. Can you state whether there was a pre-emption proved up before you on the S. E. $\frac{1}{4}$ of sec. 18, in T. 16, south of R. 25 west, and in whose name.

Answer. By referring to the books of my office I find, on the 19th of February, 1843, that Massach H. Janes entered the tract in the question last put, but cannot state for whose use it was entered.

Question. Can you state whether the complainant in this suit was present at the time the pre-emption was established on the tract of land in controvessy in this cause?

Answer. I cannot. There were many persons present, but I cannot now remember particularly any one. William Wynn was present about the same time, in attending to the proof of pre-emptions, frequently in and out of the office.

Question. Can you state when a proposition was made to the complainant by way of a compromise by you or any other person, to divide lands between the complainant and defendant in this cause so as to give defendant the E. $\frac{1}{2}$ of the S. E. $\frac{1}{4}$ and the E. $\frac{1}{2}$ the N. E. quarter of sec. 18 in T. 16 S. of R. 25 W., and if so, at what time was it.

Answer. There seemed to be a considerable dispute about it to arise between Wynn and Garland about their lands, and from my knowledge of their claims and the situation of their lands, I was under an impression that a division might be made of the land in dispute in such a manner as to give each one his improvement, and that I proposed an amicable division between them of the land in controversy, to Col. Garland to which he assented, and I afterwards made the same proposition to Col. Wynn, who refused to make any division; and my impression is that the land in dispute is the two quarter sections above mentioned. These propositions were made by me within a day or two after the entries were made, and before they had left town, when said pre-emptions were proved up.

Question. Are you acquainted with Morgan Cryer?

Answer. I am; I have known him for more than twenty years.

Quest. Was he sworn in the probate of any pre-emption about the time Waggoner was?

Answer. He was, but I don't recollect what particular pre-emption.

Quest. What has been the character of Morgan Cryer since you have known him?

Answer. He always, so far as I know, sustained a fair and honorable character.

To the above examination complainant excepts, which exceptions is overruled by me, and the benefit thereof saved before the Chancellor.

(*Cross-Examination by Complainant.*)

Question. Did you administer the oaths to Jacob Waggoner, at the several times he swore as you have above stated, or to who?

Answer. I do not recollect whether I did or not. It was formerly the case, that oaths were to be administerd by a Justice of the Peace, but about that time a law was passed, authorizing Registers and Receivers to administer such oaths.

Question. You say you are well acquainted with Jacob Waggoner, would or would you not have taken his affidavit without serious questions, if it have been in due form, and made before a Justice of the Peace?

Answer. It was a general rule to question a witness, until I was satisfied that he knew what he was swearing to. I would have taken h s affidavit without question, if I believed that he was fully informed as to what he was swearing. I would not have questioned his word upon any matter that he was acquainted with.

Question. You say Samuel Hemphill proved up a pre-emption on the N. E. ¼ of sec. 18, herein-before stated, on the 19th day of February, 1843. State whether said Hemphill was present at any time, and who was the active person in establishing that fact?

Answer. Said Hemphill was not present, according to my recollection, the active person in establishing that right of pre-emption, was Josiah Garland, the defendant herein.

Question. Do you feel willing to say that Jacob Waggoner was sworn in your office at that time, or was not the affidavit prepared and brought to you, and if so, by whom?

Answer. I do not recollect particularly. It strikes me it was sworn to in my office or in the Register's.

Question. Do you or not know that the pre-emption in favor of Samuel Hemphill, was proved up and established on Sunday?

Answer. I do not. I think it was.

Question. From what you know of Jacob Waggoner, would you think he could be deceived and imposed upon, and would he not from his want of education, and from old age, be imposed upon in

upon as a suspicious man. I have considerable dealings with him and found him at all times perfectly straight and honorable in my transactions with him.

To all of which examination and answers, the complainant excepts, and it is agreed that said complainant shall have the full benefit thereof, on the trial before the chancellor.

ISAAC N. JONES.

Sworn to and subscribed before me, the undersigned Justice of the Peace of Hempstead County, Arkansas, 28th Decr., 1847.

JOHN D. TRIMBLE,
J. P.

STATE OF ARKANSAS, *County of Hempstead.*

I, John D. Trimble, an acting and duly commissioned Justice of the Peace in and for the county of Hempstead, in the state of Arkansas, do hereby certify and make known that the foregoing depositions of William Moss, Daniel T. Wetter, and Isaac N. Jones, was taken before me, on the 27th and 28th days of December, A. D., 1847, with the hours and at place mentioned in the caption hereof, that the examinations, responses and statements of each deponent were reduced to writing in my presence, and by the said deponents respectively sworn to and subscribed in my presence, at the time and place aforesaid, and that said deponents are residents of the county of Hempstead, in the state of Arkansas.

Witness my hand this 28th December, A. D., 1847.

JOHN D. TRIMBLE,
J. P.

John D. Trimble, J. P., for taking and certifying depositions, - - - - - - - - -	$3 00
D. T. Witter, Witness, - - - - - -	1 00

Rec'd. my fees of Josiah Garland,

JNO. D. TRIMBLE,
J. P.

Opened and published by order of Court, April 30, 1849.

A. BYRNE,
Clerk.

Depositions taken on the part of defendant, on the 1st day of January, 1848, in pursuance of a commission issued for that purpose, which appear in words and figures following to wit:

STATE OF ARKANSAS, *County of Lafayette.* } *S. Ct.*

LAFAYETTE CIRCUIT COURT, *July Term*, 1847.

WILLIAM WYNN, *vs.* JOSIAH GARLAND, } Injunction.

Came the parties by their respective solicitors, and on motion, and by consent, and agreement of parties here in open Court expressed, it is ordered that said complainant file his exceptions or replication to the answer of said defendant herein at least sixty days before the first day of the next term of this Court.

And by like consent and agreement, it is further ruled and ordered by the Court, that both of said parties have and leave is hereby granted unto each of them to take the depositions of witnesses generally, before any Judge or Justice of the Peace of this State or of any of the States of the United States or Territories thereof to be read in evidence, either to sustain or dissolve the injunction granted herein or to be read in evidence on the final hearing of this cause in like manner and with like effect, as if this cause had been regularly set down, for final hearing upon issues formed herein.

A true copy from the record.

Attest,

JOHN D. JONES,
Clerk.

STATE OF ARKANSAS, *County of Lafayette.* } *S. Ct.*

WILLIAM WYNN,
vs.
JOSIAH GARLAND,

To any Judge or Justice of the Peace, to whom these presents shall come, greeting:

Know ye that we, reposing confidence in your prudence and fidelity, do, by these presents, give you authority diligently to examine all witnesses whatever, produced before you, in a certain suit now pending in our Circuit Court, in and for the County of Lafayette,

and State of Arkansas, on the Chancery side of said Court, in which William Wynn is complainant, and Josiah Garland is defendant.

Therefore, we desire you, that at certain times and places, by you to be appointed for that purpose, you cause the witnesses to come before you, and that you then and there, examine them upon their corporal oath, first taken before you upon the Holy Evangelists, that you reduce their examinations to writing, and when you shall so have taken them, that you send the same, with this commision, closed up under your seal, to us, in our said Circuit Court, at the town of Lewisville, without delay.

[SEAL.]

In testimony whereof, I have hereunto set my hand as Clerk, and affixed the seal of said Court, at office this 23d day of December, in the year of our Lord, one thousand eight hundred and forty-seven, and in 73d year of American Independence.

J. D. JONES,
Clerk.

The execution of this commission appears by a schedule hereto annexed.

Given under my hand, this 1st day of January, A. D., 1848.

JOHN STEEL,
Justice of the Peace.

Depositions of witnesses taken and subscribed before me, John Steel, an acting Justice of the Peace, for the County of Lafayette, in the State of Arkansas, duly commissioned as such, on the 1st day of January, A. D., 1848, between the hours of 6 o'clock in the forenoon, and 6 o'clock in the afternoon of said day, at the house of Morgan Cryer, in the County of Lafayette, in the State of Arkansas, in pursuance of a commission hereto annexed, and to be read as evidence in a certain cause now depending in the Circuit Court of the County of Lafayette, in the State of Arkansas, wherein William Wynn is plaintiff, and Josiah Garland is defendant, on the part of the defendant.

Morgan Cryer, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn to testify the truth, whole truth and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did, then and there on his oath aforesaid, depose as follows, to wit:

1st Question. Please state how long you have resided in Arkansas, and how long, and what part of Lafayette County have you resided?

Answer. I came to Arkansas in the year 1815, resided in Clark

County three or four years and removed to Lafayette County in the year 1819 or 1820, where I now reside. I lived in Fisher's Prairie until the year 1833. I then removed to my plantation, where I now live, which is about five miles from Fisher's Prairie. I lived on my farm until I moved now where I live, which is about four or five years.

Question. What time did you remove to Fisher's Prairie?

Answer. About the year 1819 or 1820.

Question. Have you been acquainted with the improvements generally made upon the lands in Fisher's Prairie from that time to the present?

Answer. I have.

Question. Do you know of any improvement made by Samuel Hemphill, in Fisher's Prairie, in 1829, and in which he was in possession in the year 1830, on the 29th of May, 1830?

Answer. I know the improvement that he lived on and that he was in possession of in that year. The improvement was not made by him, but he purchased the improvement of Philip Duty.

Question. Did Hemphill cultivate this improvement in 1829, and hold possession of it on the 29th May, 1830?

Answer. He cultivated the land in 1829. He also cultivated it also 1830, and I supposed he had possession, as he lived on it, as well as I recollect, he lived there during the year 1830, and gathered the crop.

Question. Will you state what qr. sec. or qr. sections Hemphill's improvement was on, as appears from the surveys subsequently made by the United States?

Answer. From the best of my recollection it was on 3 or 4 different quarters, I am not now hardly able to state what quarter it was upon, as it has been so long since I examined them.

Question. Can you state any one quarter on which the improvement or any part of it, was?

Answer. I do not recollect the section, but thought the improvement was divided by the section line, but I cannot recollect the number at this time.

Question. Have you ever given your deposition in relation to the pre-emption of Samuel Hemphill?

Answer. I have.

Question. Before whom was that deposition taken and subscribed to?

Answer. Before Daniel F. Wetter, Receiver of Public Moneys at Washington, Arkansas.

Question. Was that deposition subscribed to by any person except yourself?

Answer. It was Jacob Waggoner I think.

Question. Can you state whether that deposition was read to you and Waggoner, before you subscribed to it?

Answer. I do not now recollect.

Question. Had you examined the lines and corners of the land on which Hemphill's improvement was situated, before you made the deposition before Wetter, the Receiver, and if so, did that deposition contain a true statement of the facts, as they then existed?

Answer. I had examined the lines and corners of the sections before I made the affidavit, and that affidavit contained to the best of my knowledge a true statement of the facts as they then existed.

Question. Have you been frequently on that land since that time?

Answer. I have.

Question. Have you any cause to think or believe that you was mistaken in the affidavit you made in relation to the pre-emption of Samuel Hemphill?

Answer. I do not believe I was any way mistaken.

Question. Was Jacob Waggoner with you when you examined the lines and corners of the land above specified?

Answer. He was not.

Question. Can you state what was the size of the improvement cultivated by Samuel Hemphill, in the year 1830?

Answer. From the knowledge I have of the farm I think it was not under 40 or 50 acres.

Question. In what part of the field was Samuel Hemphill's house?

Answer. The house was not in the field, but at one corner, I think if I do not mistake, it was at the north east corner.

Question. What direction did the fence run on the north side of Hemphill's field?

Answer. I think it run north of west, going from Hemphill's to Janes.

Question. At the time in 1830 what was the distance in 1830, from Hemphill's fence from the west, to Janes' fence?

Answer. I cannot state the precise distance, there was a right smart piece of prairie between the two fences about that time.

Question. In 1830, was there any improvement by any one, between said Hemphill, on the south, and you?

Answer. There was an improvement between the two farms, made by a man by the name of Knowlin.

Question. What was the distance from Hemphill's on the south, to Knowlin's field?

Answer. Knowlin's came near to Hemphill's, within a few feet?

Question. What was the distance from Hemphill's field on the south, to your field, and what was the size of Knowlin's field?

Answer. I cannot tell the distance. That Knowlin had a right smart field, perhaps thirty acres.

Question. What was the distance from Knowlin's field to your field?

Answer. Perhaps about one hundred yards.

Question. What was the farm of Hemphill's field, was it longest east and west, or north and south?

Answer. From the knowledge I have of the farm, I think it was largest east and west.

Question. Has Garland extended his plantation by moving his fence west, since his purchase from Hemphill, if so, how much?

Answer. Garland removed his fence west, and took in some raw paririe, between him and Janes, but what distance I cannot state.

Question. Can you state in what direction from the house the well was, used by Hemphill, in the years 1829 and 1830?

Answer. It was on the west end.

Question. Has the houses been removed that Hemphill lived at that time in, and if so, how far?

Answer. The building was removed, but I cannot state how.

Question. Has the well been filled up at the west end of Hemphill's house, or is it still open?

Answer. I suppose it has been filled up, as it has been cultivated where the house stood for several years.

Question. From 1830 to 1844, was you frequently on that plantation?

Answer. I was.

Question. Was you acquaintinted with the locality of the building built by the defendant, Garland, after he purchased from Hemphill?

Answer. I was.

Question. Did defendant, Garland, use the same well used by Hemphill or did he dig another?

Answer. Garland dug another well.

Question. Do you recollect whether the field cultivated by Hemphill in 1829 and 1830, was enlarged by Philip Duty after he purchased it from Matlack, or by Samuel Hemphill after he had purchased from Duty?

Answer. I think the field was enlarged by Philip Duty. I think he had employed Hemphill to enlarge the field before he had sold it to Hemphill.

Question. Can you state whether the fence was made round the field by Duty or Hemphill?

Answer. I think as well as I can recollect that Duty owned the improvement and Sam'l Hemphill placed the fence around it.

Qnestion. Can you state in what years?

Answer. I cannot state precisely, but it was previous to 1829.

Question. Was Andrew Hemphill living in Fisher's prairie at the time that fence was built?

Answer. I don't think he was.

Question. Has the house occupied by Massach Janes when he resided in Fisher's prairie, been removed, if so how far, and in what direction?

Answer. The house that Janes lived in has been removed perhaps about one hundred yards, east course.

Question. How far from the conditional line agreed upon by

Hemphill and Janes was Garland's fence after he had enlarged his field, in the west?

Answer. I think Garland moved his fence to the conditional line.

Question. Did Garland's fence continue to occupy that same position until the time Sam'l Hemphill's pre-emption was proved up?

Answer. The fence did continue to occupy the same position.

Question. Will you please state whether when your deposition and Jacob Waggoner's was taken to prove the pre-emption of Sam'l Hemphill, you and Mr. Waggoner was examined by the Receiver, Daniel F. Wetter, whether you and Mr. Waggoner had examined the lines and corners of the land on which Samuel Hemphill's improvement was situated?

Answer. I can't recollect much about what was done.

Question. Do you know anything about a celebrated hickory tree, that stood between Hemphill and Janes?

Answer. This tree stood on left of the road going from Hemphill's to Janes', and was the line between them running north and south.

(*Cross-Examined by Complainant.*)

Question 1st. When said Samuel Hemphill lived in Fisher's prairie in Lafayette county, was he the head of the family, or did he not live with and work for his mother, as one of the family?

Answer. Samuel Hemphill had no family, but my understanding was that it was Samuel Hemphill's place. It generally went in the name of Samuel Hemphill's place. His mother lived with him, and his mother's negroes appeared to work for him. They all worked together. Samuel Hemphill had control.

Question 2d. When did Samuel Hemphill remove from Fisher's prairie, and after his removal, did he ever return to reside there?

Answer. He removed in 1833 or 1834.

Question. You stated upon your examination in chief that Samuel Hemphill's improvement must have been upon three or four different quarter sections. Have you ever traced by a compass, or in company with a surveyor who run the lines by a compass, the lines of said quarter sections or any one of them upon which said improvement or any part thereof was made?

Answer. I have never run it with compass, nor have I been with any one who did run it with a compass. I have seen the fence as now placed by Wynn, and it appears to be about the place where the line which they all agree is about the line.

Question 4th. Was not the improvement of Samuel Hemphill before referred to situated in a prairie, and was there any trees or natural objects by which the survey made by the United State officers could be ascertained and identified, and the lines accurately ascertained and traced without a compass?

Answer. The improvement was in a prairie. There was a mark

on a stake stuck by the surveyor as I supposed. I did not see it stuck there by the surveyor, neither was I told so.

Question. State if before you made the affidavit referred to in examination in chief where you say you had examined the lines and corners of the land, on which Hemphill's improvement was situated, whether that examination was made accurately and with a compass, or merely by guess without a compass?

Answer. I never examined it with a compass. I traced the lines in the timber by following the blazes until I came to the prairie. I should suppose where the timber was, I should suppose it to be about one half mile to a stake from the south side, from the north side of the prairie from the timber to the mile stake, was about three quarters of a mile. On the south side, there was no intermediate stakes between the mile stake and the timber, on the south side. On the north side there was a half mile stake between the mile stake and the timber.

Question 6th. You have said on your examinations in chief that there was, in 1830, a right smart piece of raw prairie between the fences, Hemphill's and Janes'. Do you mean Samuel Hemphill and Massach Janes?

Answer. There was a piece of raw prairie. I mean Samuel Hemphill's and Massach Janes.

Question 7th. State whether the fence referred to in you examination in chief of Massach H. Janes has been extended since 1830, and carried out further towards Hemphill's improvement, or drawn nearer in toward his own where he used to reside.

Answer. It has been extended towards Hemphill's.

Question 8th. Did William Wynn the complainant, since the commencement of this suit, in anticipation that your deposition would be taken, address you a letter in which he urged you before deposing in the case to examine the levies critically, and that he would employ any surveyor you might name, and afford you every facility for that purpose you might desire, and if so will you please produce that letter, and make the same an exhibit and part of your deposition?

Answer. Judge Hightower delivered me a letter from William Wynn requesting me to come and examine the lines, but the same is lost or mislaid.

(*Re-Examined by Defendant.*)

Question 1st. Had the stake that you spoke of situated in the prairie, half mile from the south side of the prairie, had it the marks and numbers of a section corner at it?

Answer. It had.

Question 2d. Was any portion of the improvement owned and cultivated by Samuel Hemphill in 1829 and 1830, west of the

section line you spoke of running north and south through the prairie?

Answer. From the knowledge I have of the farm, I think it did.

But mutual consent and agreement of complainant and defendant by their solicitors, no objection was made before the justice to any interrogatory before the justice propounded by either, or to the answers thereto, and by like consent it is agreed that each shall have the benefit of any exception he may choose to make before the chancellor or master in chancery in the Circuit Court.

WILLIAM WYNN.

By J. W. COCKE.
His Solicitor.

JOSIAH GARLAND.

By HUBBARD & HEMPSTEAD.

And further this deponent saith not.

M. CRYER.

I John Steel, an acting and duly commissioned Justice of the Peace, in and for the County of Lafayette and State of Arkansas, do hereby certify and make known that the foregoing deposition of Morgan Cryer were taken before me on the first day of January, A. D. 1848, between the hours of 6 o'clock A. M. and 6 o'clock P. M., and at the place in the caption hereof above mentioned; that the examination, responses and statements of the said defendant, were reduced to writing in my presence, and by the said deponent *respectfully* sworn to and subscribed in my presence, at the time and place aforesaid, and that said defendant *are* resident of the county of Lafayette, in the State of Arkansas.

In testimony whereof I, John Steel, Justice of the Peace, do hereunto set my hand as Morgan Cryer, in the State of Arkansas, on the 1st day of January, A. D., 1848.

JOHN STEEL.
Justice of the Peace.

Opened and published by order of Court, April 30, 1849.

A. BYRNE,
Clerk.

Depositions of witnesses taken on the part of defendant, on the 3d day of January, A. D. 1848, appear in words and figures following, to wit:

Depositions of witnesses taken and subscribed before me, John D. Trimble, an acting Justice of the Peace, for the County of Lafayette, in the State of Arkansas, duly commissioned as such on the —— day of December, A. D., 1848, between the hour 6 o'clock, in the forenoon and 6 o'clock in the afternoon of said day at the court house, in the town of Louisville, in the County of Lafayette, in the State of Arkansas in pursuance of a commission hereto attached, and to be read as evidence in a certain cause now pending in the Circuit Court of county of Lafayette, in the State of Arkansas, wherein William Wynn is plaintiff, and Josiah Garland is defendant, on the part of the defendant.

George Brinlee, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn, to testify the truth, the whole truth and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there on his oath aforesaid, depose as follows, viz:

Question. What is your age, and how long have you lived in Arkansas, and what part?

Answer. I am forty-six years of age, and I came to Arkansas in the year 1822. I went down to Fisher's Prairie in the latter part of 1823, or in the fore part of 1824. I lived in Fisher's Prairie during the year 1824. In 1825 I lived in Chickening Prairie. In 1826 I lived in Fisher's Prairie, on the place then owned by William Matlack. I left said place betwen the 13th January and 1st of March, 1827, and moved to little Prairie, which is now Hamilton's little prairie farm about three miles distant, and lived there until the spring of 1828. I then went to Lost Prairie and lived there until 1830. From there I then moved to Elam's Prairie, I lived there until 1836. I then moved to where I now live, which is in Bowie County, Texas, was then Lafayette County, Ark.

Question Were you acquainted with the several improvements made upon the public lands in Fisher's Prairie, now Lafayette County?

Answer. I was.

Question. Did Samuel Hemphill own and cultivate an improvement in Fisher's Prairie in the year 1829 and 1830?

Answer. He did cultivate, and as I understood, owned an improvement in Fisher's Prairie.

Question. Of whom did he purchase that improvement?

Answer. I do not know only from hear say.

Question. Who owned that improvement when you first knew it?

Answer. William Matlock.

Question. To whom did William Matlock sell said improvement?

Answer. William Matlock died, and his widow, Mary Matlock, sold it to Philip Duty.

Question. What quantity of land was in cultivation, when William Matlock owned that improvement?

Answer. Between forty and forty-five acres. There was 15 or 20 acres enclosed when I went to live with him, and we enclosed and cultivated twenty or twenty-five acres more. This was in 1826.

Question. At what part of the improvement was the house situated?

Answer. At the North-east corner of the field. There was a fence between the house and the field, and also around the house.

Question. What direction did the farm run, on the North side of the Matlock field towards Janes?

Answer. North of West.

Question. What was the form of the field?

Answer. It was an oblong square, it was longest East and West.

Question. Was there any additions made to that field after it was sold to Philip Duty, if so, by whom and on what part of the field?

Answer. There was an addition made on the West end, by whom I do not know.

Question. After such addition, what quantity did the field contain?

Answer. I would be unable to say what was in the field after the addition was made, but I would suppose there was fifty acres or more.

Quhstion. What distance from the fence on the West side of Hemphill's field to the conditional line running North and South, as agreed upon by William Matlock and Massach H. Janes?

Answer. I would be unable to say with any kind of accuracy, the distance, there was a right smart piece of raw prairie between the West part of Hemphill's plantation, and the old conditional line between Matlock and Janes.

Question. What year did you say you lived on the Matlock place?

Answer. I made a crop with Matlock in the year 1826, upon said improvement?

Question. Has the house that Massach H. Janes lived in been removed since he sold it?

Answer. It has, but how far or where I cannot tell.

Question. Do the buildings occupy the same situation that they did when Massach H. Janes lived there?

Answer. They do not, but I should think they are some two hundred yards East.

Question. What distance is the complainant's dwelling-house at this time, from the old conditional line above spoken of?

Answer. They are but a very short distance, some where in a grove near the complainant's present dwelling, in which the conditional line started running a South-east direction, taking a celebrated broken top hickory tree in the line.

Question. What distance from the grove did this hickory tree stand?

Answer. I think at least one hundred yards.

Question. Can you state whether the well used by Matlock and Hemphill on the place, has been filled up?

Answer. I think it has been filled up, I could see no sign of it, when recently there.

Question. When Samuel Hemphill lived on that place, who owned it?

Answer. I don't know of my own knowledge.

Question. Did Samuel Hemphill work on the place, and cultivate it in 1829, and have possession of it in the month of May, 1830?

Answer. I think he did, but I am not certain.

Question. Have you examined the lines and corners of the land on which the aforesaid improvement was situated, as shown by the snrvey of the United States?

Answer. I went with Josiah Garland to a corner in range 25, Township 16, N. E. corner of section 18, and trace the line by the blazes which led into the prairie, at a gate made between two fences, opening into a lane between the plantations of complainant and defendant. We then went on to a stake in the lane, and there I set the compass, and let its needle settle and sighted back the *coast*, we came on the blazes, which was a due North course back, then I set the compass and sighted East and West, and found that the fence on the North side of complainant and defendant's plantations, inclined to the North as it run West; then I stepped from the stake back to a twin post oak near the gate on the line, *these* 333 steps to this twin post oak, as before mentioned.

Question. Can you state whether any portion of the field cultivated by Samuel Hemphill in 1829 and 1830, extended across and West of the lane between Garland and Wynn?

Answer. I think it did.

Question. State if you know what quarter section the farm cultivated by Samuel Hemphill, in 1829 and 1830, was situated?

Answer. On the North-east and South-east quarters of section 18, and the N. W. and S. W. quarters of sec. 17, in T. 16 S. of R. 25 West, the Sam'l Hemphill farm was situated.

Question. Can you state whether Samuel Hemphill, John L. Hemphill and his mother had each separate stock marks when they resided in Fisher's Prairie?

Answer. I do not know.

Question. Did John L. Hemphill and his mother live with Samuel Hemphill, whilst he resided in Fisher's Prairie?

Answer. They all lived together.

Question. Can you state what quantity of land the Hemphill plantation as it was enclosed in 1829 and 1830, was across and West of the lane now existing between complainant and defendant?

Answer. I would say, including the whole length of the field, I would suppose about fifteen acres, and considerable more on the North-east quarter of said section 18, in T. 16 S., R. 25 West, than on the South-east quarter of said section.

(*Cross-examined by Complainant.*)

Q. You speak in your examination in chief of a conditional line. Was that conditional line the same with the line of the public surveys of the United States?

Answer. It is West of the line of public surveys.

Question 2. Did you ever trace the section line that divides section 17 and 18 with a compass?

Answer. Mr. Garland the defendant and myself, went to the corner dividing sections 17 and 18, T. 16., R. 25, and traced the line by the blazes through the timber, which I supposed to be the surveyor's blazes dividing the N. E. ¼ of section 18, and the N. W. ¼ of section 17, to a gate opening into a lane between defendant's and complainant's farms; we went down that lane to a stake, which I suppose to be a half-mile stake, and then set the compass by that stake, and let the needle settle and sighted back in the course which we came and North as I suppose, then I turned the compass and sighted both East and West. I then stepped from that stake back in the said due North course, to a twin post oak, the first tree in the timber, on the line that had traced, which tree was blazed, and as I supposed, a line tree, and it was 333 steps from the stake back to this tree.

3d Question. Are you a surveyor, and was there any disinterested surveyor with you when you traced said line.

Answer. I am not a surveyor, but have run with a compass some lines of my own. There was no surveyor with me, so far as I know. I do not know that Col. Garland, the defendant, is a surveyor. There was no person with me but the defendant, Col. Garland and a young man living with him.

Question. State if you know whose compass it was, and whether or not it was an accurate one, and whether or not if it was not an accurate one you from your knowledge of compasses you could have detected it?

Answer. I don't know whose compass it was. The defendant had the compass there that we used. I do not know whether the compass was accurate or not, but it seemed to work well, and so far as I am able to judge, was a pretty good compass. A portion of the glass was broken from one corner of it, but I spread a handkerchief over the broken part so as to prevent the air from interfering with the needle. I would believe a compass was accurate when the needle worked well, but am not well enough acquainted with the workings of a compass to tell when one is out of order, without

applying a test, and I did not apply a test, *but did not apply a test* to this compass.

Question. You speak of a stake in your examination in chief, which you supposed to be a half-mile stake. Do you know whether that stake was planted there by the United States Surveyor, or whether it had been removed after it was planted by the Surveyor of the United States, and when was it, as near as you can recollect, that you traced the lines as referred to in your examination in chief.

Answer. I do not know whether it was planted there by the United States Surveyor or whether it was removed to that place from where it was planted by the surveyor aforesaid. I traced the line sometime about the 7th of December, 1847.

Question. Between the twin oak tree of which you speak and the stake aforesaid, was there any marked trees or stakes or any other marks of any character whatever made, or which was represented to you as having been made by a public surveyor or by any other surveyor as designated the true course of the line from aforesaid twin oak trees to the half-mile stake aforesaid?

Answer. There was not. There was a lane, a fence on each side, and my guide was the compass aforesaid.

Question. State whether the complainant William Wynn was present at the time you traced the line as before mentioned or whether he had any notice either written or verbal that you were about to trace said lines?

Answer. He was not present. I don't know whether he had any notice of it or not.

Question. You state in your examination in chief that Samuel Hemphill cultivated farm in Fisher's in 1829, and had possession of it in May, 1830, which farm embraced a portion of the N. E. ¼ of sec. 18, as mentioned in your answer above stated. State at what time in said month he was possessed of same, and who was living with him, and if he worked any slaves, and if so, whose slaves, and who seemed the proprietor of the stock and farming utensils upon said place?

Answer. According to the best of my recollection, he was possessed of the place during the whole of that month. I did not see him buy the place. He lived on the place and superintended the farm and it was called his. His mother and his brother John L. Hemphill, all lived together there. He worked slaves there, but they were called his mother's and so generally understood to be. He seemed to be proprietor of the farming utensils. His mother had some stock, and I believe Samuel Hemphill also had some.

Question. You say in your examination in chief that Samuel Hemphill cultivated and was in possession of a portion of the N. E. ¼ of sec. 18, T. 16, S. of S. 25 W. Was that township surveyed when you lived in the neighborhood of Fisher's prairie?

Answer. It was not. I had removed from Fisher's prairie be-

fore said land was surveyed, and then lived where I now live in Bowie county, Texas, which was then in Lafayette county, Arkansas. I only know that a part of the above mentioned Hemphill's improvement was upon the said north east quarter from the examination I made, as hereinbefore stated not having examined the lines and courses since the survey, but that one time, and in the manner hereinbefore stated.

By mutual consent of complainant and defendant by their solicitors, it is agreed that each party waive all exceptions as to want of form and notice in the taking of the above and foregoing deposition of said George Brumlee, but that each reserve the right to except upon the trial to the legality and competency of any question propounded upon the examination in chief, or to the cross-examination, and also to the legality and competency of the testimony given by said witnesses upon either examination aforesaid, and that said deposition may be read in evidence, reserving to complainant and defendant only the exceptions and rights aforesaid reserved.

FIELD, HIGHTOWER, and COCKE,
Solicitors for Complainant.

WATKINS & CURRAN,
HUBBARD & HEMPSTEAD,
Solicitors for deft.

GEORGE BRUMLEE.

Sworn to and subscribed before me, the above named John Steel, this 3d day of January, A. D., 1848.

Opened and published by order of Court, Apr. 30th, 1848.

JOHN STEEL,
Justice of the Peace.

A. BYRNE,
Clerk.

Deposition taken in pursuance of notice and commission, on the 23d day of March, 1848, in behalf of complainant, all of which appears in words and figures following, to wit:

To WILLIAM WYNN, ESQ.,

Take notice that in pursuance of a rule of the Lafayette Circuit Court, and of a commission issued in conformity thereto, in a certain cause pending, wherein you are plaintiff, and I am defendant, I shall proceed on the 23d day of March next, between the hours of 8 o'clock, A. M., and 6 o'clock, P. M., of said day, (and if necessa-

ry continue from day to day, at the same place, and between the same hours), at the Clerk's office, in the Court House, in the county of Clark, and state of Arkansas, to take the depositions of witnesses generally to be read as evidence on the trial of said cause, where and when you may attend if you think proper.

Given this 25th day of February, A. D., 1848.

JOSIAH GARLALD.

By HUBBARD & HENPSTEAD,
Attorneys.

I do hereby certify that I executed the within notice on William Wynn, at his residence in Fisher's prairie, in Lafayette county, Arkansas, on the 2d day of March, 1848.

For service 50 cents, 24 miles circular 5 cts. per 72, $1.22.

A. C. OWEN,
Sheriff of Lafayette Co., Ark.

By WILLIAM GRANT,
Deputy Sheriff.

STATE OF ARKANSAS, } ss.
County of Lafayette }

January Term, 1848.

WILLIAM WYNN, Complainant, }
vs. } In Chancery.
JOSIAH GARLAND, Defendant. }

At this day came said parties by their solicitors, and on motion it is ruled and ordered that they have and leave is hereby granted unto them to take the depositions of witnesses generally before any Judge or Justice of the Peace of any of the States of the United States or territories thereof, to be read in evidence, on the final hearing of this cause, and that commissions issue for that purpose.

A true copy from the record.

Attest, J. D. JONES,
Clerk.

THE STATE OF ARKANSAS.

To any Judge or Justice of the Peace, of any of the United States, or territories thereof, greeting:

Know ye, that reposing confidence in your fidelity, we do by these presence give and grant unto you full power and authority to cause to come before you such persons as the parties or either of them should require at such time and place as they or either of them shall designate, and there strictly examine, upon their respective corporal oaths first taken upon the Holy Evangelists, touching their knowl-

edge of the matters in issue, in a certain cause now pending in our Circuit Court on the chancery side thereof, wherein William Wynn is complainant and Josiah Garland is defendant; and that you reduce such examinations to writing, and cause such witnesses to subscribe the same in your presence, and that you send the same with this commission, sealed up under your seal to our said Circuit Court, directed to the Clerk thereof, without delay.

[SEAL.]

In testimony whereof I have hereunto set my hand as Clerk, and officered the seal of said Court at office, this 6th day of March, in the year of our Lord, one thousand eight hundred and forty-eight, and in the seventy-third year of American Independence.

J. D. JONES,
Clerk.

Depositions of witnesses taken and subscribed before me, R. L. Wilson, an acting and duly commissioned Justice of the Peace in and for Caddo Township, in Clark Co. and State of Arkansas, on the blank day of March, A. D., 1848, between the hours of 8 o'clock, A. M., and 6 o'clock, P. M., of said day, at the Clerk's Office, in the Court House, within the County of Clark and State of Arkansas, in pursuance of a commission hereto annexed, and to be read as evidence in a certain cause now depending in the Lafayette Circuit Court for said County, on the Chancery side of said Court, wherein William Wynn is complainant, and Josiah Garland is defendant, on the part of the defendant.

Jacob Barkman, a witness known to be of lawful age being to me at the time and place aforesaid produced, and being by me first duly sworn, to testify the truth, the whole truth and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there on his oath aforesaid, depose as follows, to wit:

I have been acquainted with Andrew Hemphill ever since 1812, and know that his general character among his acquaintances, as a man of truth and veracity, is bad. From said Hemphill's general reputation for truth among his acquaintances, I do not consider him worthy to be believed on his oath. I have known said Hemphill for a long time. His character has been a subject of general conversation in the community which he lived, and I have good opportunity of knowing his general character, reputation as a man of veracity. My statements in relation to said Hemphill's general character, is founded on the common report, and understanding of his acquaintances as to truth.

J. BARKMAN.

Sworn to and subscribed before me, this, the 23d March, 1848.

R. L. WILSON,
J. P.

I, R. L. Wilson, an acting and duly commissioned Justice of the Peace, in Caddo Township, in Clark county, and state of Arkansas, do hereby certify and make known that the foregoing deposition of Jacob Barkman, was taken before me, on the 23d day of March, 1848, between the hours and at the place in the caption hereof mentioned, that the examination, responses and statements of said deponent was reduced to writing by me, and by said deponent, sworn to and subscribed in my presence, at the time and place aforesaid, and that said deponent is a resident of the county and State aforesaid.

Given under my hand, this, the 23d day of March, 1848.

R. L. WILSON.
J. P.

Opened and published by order of Court, April 30, 1849.

A. BYRNE,
Clerk.

Depositions taken on the part of defendant, in Memphis, Tennessee, on the 14th day of April, 1849, in pursuance of notice and commission for that purpose, all of which appear in words and figures following, to wit:

To WILLIAM WYNN, ESQR.

Sir:

Take notice that I shall attend at the law office of Messrs. Searcy & Pope, in the city of Memphis and State of Tennessee, on Saturday the 14th day of April next, between the hours of 8 o'clock in the forenoon, and 6 o'clock in the afternoon of said day, then and there, to take the depositions of witnesses to be read in evidence on the trial of a cause now pending, and undetermined in the Circuit Court, in and for the County of Lafayette, in the State of Arkansas, wherein I am plaintiff, and you and Joshua L. Howard are defendants, this March 15th, 1849.

JOSIAH GARLAND.

I acknowledge due and legal service of the within notice, by copy of the same, this 16th day of March, 1849.

WILLIAM WYNN.

STATE OF ARKANSAS, } ss.
County of Lafayette. }

IN THE LAFAYETTE CIRCUIT COURT, March the 16th, A. D., 1849.

JOSIAH GARLAND, Plaintiff,
vs.
WILLIAM WYNN, and
JOSHUA L. HOWARD, Def'ts.

Now, on this day, came the plaintiff in his own proper person, and on his motion, leave is granted him to take the depositions of witnesses generally, before any Judge or Justice of the Peace of any of the States of the United States, or any of the Territories thereof, to be read as evidence on the final hearing of this cause, and that a commission issue for that purpose.

A. BYRNE,
Clerk.

A true copy from the record.

Attest, A. BYRNE,
Clerk.

THE STATE OF ARKANSAS,

To any Judge or Justice of the Peace, in any of the United States or Territories thereof, greeting:

Know ye, that we reposing confidence in your prudence and fidelity, do by these presents, give unto you authority diligently to examine all witnesses who may come before you in a certain suit now pending in our Circuit Court, in and for the county of Lafayette, in which Josiah Garland is plaintiff, and William Wynn and Joshua L. Howard is defendants.

Therefore we desire you, that at such times and places as shall be named to you for that purpose, you cause the said witnesses to come before you, that you then and there examine them upon their respective corporal oaths first taken before you, that you reduce their examination to writing, and when you shall so have taken them, that, you send the same with this commission closed up under your seal to us in our said Circuit Court, at Louisville, without delay.

Witness: I, Alexander Byrne, Clerk of said Court, and the seal of said Court, at office, this 16th day of March, A. D., 1849, and of the State the thirteenth year.

[SEAL.] A. BYRNE.
Clerk.

Execution of this commission appears by the schedule hereunto annexed.

JOS. ROSE,
J. P.

Depositions of witnesses taken and subscribed before me, James Rose, an acting Justice of the Peace, for the County of Shelby, in the State of Tennessee, duly commissioned as such, on the 14th day of April, A. D., 1849, between the hours of 8 o'clock, in the forenoon, and 6 o'clock, in the afternoon of said day, at the office of Searcy & Pope, in the city of Memphis, in the county of Shelby, in the State of Tennessee, in pursuance of a commission hereto annexed and to be read as evidence in a certain cause now depending in the Circuit Court of the County of Lafayette, in the State of Arkansas, wherein Josiah Garland is plaintiff and William Wynn and Joshua L. Howard, are defendants, on the part of the plaintiff.

James Gift, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there on his oath aforesaid, depose as follows, to wit:

1st Question by plaintiff. Are you acquainted with the parties to this suit?

Ans. I am.

Ques. 2, by same. What is your age, and where do you reside?

Ans. I am forty-six years old, reside in Shelby County, Tennessee.

Ques. 3d, by same. Have you ever acted as overseer for either of said parties, if so, for which one, and at what time?

Ans. I have acted in that capacity for both Wynn and Garland. In the year 1844, I was in the employ of Wynn and in the year 1846, and four months of 1847, I acted in said capacity for Garland.

Question 4th, by same. Do you know anything of the surveys of the public lands in and about the plantation of the said Wynn and Garland?

Ans. I do.

Ques. 5th, by same. Do their plantations join—if so, how do they join?

Ans. They do join—Wynn's joins Garland's on the South and West.

Question 6th, by same. Is there a lane between the plantations, if so, by whom was it made?

Ans. There is a lane between the plantations. One string of the fence was made by Wynn, the other, Garland.

Quest. 7th, by same. At the time you were acting as overseer

for William Wynn, had the said Garland any land in cultivation on the N. E. ¼ of sec. 18, T. 16 S. R. 25 W., in Lafayette County, Arkansas, if so, how much?

Ans. Yes, he had agreeable to my judgment, about forty acres.

Ques. 8th, by same. Did Wynn cultivate any part of said 40 acres, whilst you were acting as his overseer?

Answer. He did not.

Quest. 9th, by same. Did any one take possession of said forty acres which Garland had in cultivation on the said North-east quarter of sec. 18, while you are acting as overseer for Garland; if so, state who it was?

Ans. It was taken from the possession of Garland by the said William Wynn.

Ques. 10th, by same. State all you know about said 40 acres of land being taken from the possession of the said W. Wynn, and placed again in the possession of the said Garland.

Answer. It was about the last of February, 1846, the Sheriff of Lafayette County, Arkansas, (A. C. Owen,) came in company with said Garland to his Garland's plantation, and the Sheriff, (Mr. Owen,) rode over to Wynn's and returned to Garland's and told the said Garland that the said Wynn was willing to give him peaceable possession of the said 40 acres of land, and abide by the law. The sheriff then put said Garland in peaceable possession of said land.

Ques. 11, by same. After Garland was placed in possession by A. C. Owen, the Sheriff, was it retaken possession of by the said Wynn?

Answer. It was.

Quest. 12th, by same. After Garland was put in possession of said piece of land by the sheriff, and before Wynn had retaken possession of said land, did yon as the overseer of said Garland have any work done on the said ground. If so, what was it?

Answer. I did, I had it cleared up and prepared for the plough.

Quest. 13th, by same. How long did said Wynn cultivate the said piece of land after he had retaken it?

Ans. Three years, 1846, 1847, 1848.

Quest. 14th, by same. At the time Garland was dispossessed of said land, what was land renting at in said neighborhood?

Ans. At that time, land was renting at three dollars per acre, in that neighborhood.

Quest. 15th, by same. Did Garland have to open more land the same Spring, in consequence of having been dispossesed of said land, if so, how much?

Answer. He did. He was compelled to open from 35 to 40 acres of land, in consequence of being deprived of said forty acres.

Question 16th, by same. Was Garland compelled to make a large number of rails the same Spring, to enclose his land in consequence of having been deprived of those that enclosed his farm, by said W. Wynn, if so, how many?

Ans. He the said Garland was compelled to make between 15 and 18 thousand rails, in consequence of having been deprived of those that enclosed his farm, by the said W. Wynn.

And further this deponent saith not.

JAMES GIFT.

STATE OF TENNESSEE, *Shelby County.* } ss.

I, James Rose, an acting and duly commissioned Justice of the Peace, in and for said County of Shelby, in the State of Tennessee, do hereby certify and make known, that the foregoing deposition of James Gift, was taken before me, on the 14th day of April, A. D., 1847, between the hours and at the place in the caption hereof above mentioned; that the examination, responses, and statements of said deponent were reduced to writing in my presence, and by the said deponent sworn to and subscribed in my presence, at the time and place aforesaid, and that said deponent, is a resident of the County of Shelby, in the State of Tennessee.

In testimony whereof, I, James Rose, Justice of the Peace, do hereunto set my hand, at Memphis, in the County and State aforesaid, this 14th day of April, A. D., 1849.

JAMES ROSE,
J. P.

STATE OF TENNESSEE, *Shelby County.* } ss.

I, the undersigned Clerk of the County Court of said County, hereby certify that James Rose, who has subscribed his name to the foregoing certificate, is an acting Justice of the Peace, within and for said County, duly commissioned, and sworn.

Witness my hand and the seal of the County Court of said County, at office, this 14th day of April, 1849.

W. S. DEWOODY,
Clerk.
By JAS. ROSE,
Dep. Clerk.

STATE OF TENNESSEE, *Shelby County.* } ss.

I, William Wash, chairman or presiding Justice of the County Court of said County, do hereby certify that said Court is a Court

of Record, that W. L. Dewoody, is the Clerk of said Court, that James Rose is his legally authorized deputy, and that his foregoing certificate is in due form of Law.

[SEAL.] Witness my hand and seal this 14th day of April 1849.

W. WASH,
J. P.

Chairman or presiding Justice of the County Court of Shelby County Term.

Fee, - - - - - - - -	$1 00
Witness fees—same, - - - - -	1 00
Clerk and chairman, - - - - -	1 00
	$3 00

Paid pl'ff.

JAMES ROSE.

Opened by me, July 26, 1849.

ALBERT PIKE,
Arbitrator.

Depositions taken on part of defendant in pursuance of notice on the 18th day of October, 1849, in Clarksville, Texas, in pursuance of notice: said notice and depositions appearing in words and figures following, to wit—

COL. WILLIAM WYNN.

Take notice, I shall attend at the Court House in the town of Clarksville, County of Red River, and State of Texas, on Thursday 18th instant, (October,) and will then and there, between the hours of 8 o'clock in the forenoon and 7 o'clock in the afternoon of said day, take the depositions of witnesses to read in evidence in my behalf on the several matters in suit and controversy, and to be arbitrated and determined by Messrs. Pike and Curran, and I will attend from day to day at said place, and between said hours, till all are taken.

J. GARLAND.

October 8, 1849.

Depositions of witnesses taken and subscribed before me, Hugh F. Young, Chief Justice, within and for the County of Red River, and State of Texas, duly commissioned as such, Chief Justice, on Thursday the 18th day of October, A. D., 1849, between the hours of 8 o'clock, A. M., and 7 o'clock, P. M., of said day, at the Court House, in the town of Clarksville, in the County of Red River, in

the State of Texas, in pursuance of a notice hereto annexed, and to be read as evidence in a certain cause now depending before Messrs. Pike and Curran, as arbitrators of the State of Arkansas, wherein William Wynn is plaintiff and Josiah Garland is defendant, on the part of the defendant.

Rev'd. W. P. McKenzie, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn to testify the truth, the whole truth and nothing but the truth in regard to the matters in controversy in the suit aforesaid, did then and there, on his oath aforesaid, depose as follows, to wit:

Question 1st. What is your age, and what is your occupation?

Answer to question 1st. I am about 43 years of age. I am instructor of pupils and a minister of the Gospel by occupation.

Question 2d. Were you acquainted with Samuel Hemphill, if so, what was his general character where he lived for honesty and veracity?

Answer to 2d question. I was acquainted with Samuel Hemphill for several years. His character for honesty and veracity was not good. If he were interesed, I would not believe him on his oath. My acquaintance commenced with Samuel Hemphill, I think in the commencement of 1840, and knew him from that time up to the time of his leaving Red River County, and State of Texas.

J. W. P. McKENZIE.

And at the same time and place before me also appeared Wade H. Vining, a witness known to me to be of lawful age, being to me at the same time and place produced, and being by me first duly sworn to testify the truth, the whole truth and nothing but the truth in regard to the matters in controversy in the suit aforesaid, did then and there on his oath depose as follows, to wit:

Question 1st. What is your age, and what is your occupation?

My age is 56, my occupation is a clerk of the District Court of Red River County and State of Texas.

Question 2d. Were you acquainted with Samuel Hemphill, if so, what was his character where he lived for honesty and veracity and honesty.

Answer to 2d question. I became acquainted with Samuel Hemphil', in the year 1837 or 1838. I knew him well from that time up to the time that he removed from Red River County and State of Texas, as I believe, which was about three years back, since which time I have known nothing of him, more than hear say. On my first acquaintance with him the said Hemphill, I regarded him as a gentleman, but a few years afterwards his conduct became so notoriously bad, that my opinion of him was entirely changed, and I was forced to believe him a dishonest man, and I could not

credit his statement in a Court of Justice under oath, where he was in the least interested.

Question 3d. Have you examined the instrument marked "A". If so, do you believe the signature of Philip Duty to be his handwriting and signatures?

Answer to 3d question, by W. H. Vining. I know and believe the signature S. Hemphill to be his own writing. That of Duty I am not certain, but believe it to be his. That of Andrew Hemphill resembles very much the signature of the said Andrew Hemphill on document which are on file in District Court in this county, I believe the signature referred to to be his. Further this deponent saith not.

W. H. VINING.

And at the same time and place before me also appeared John Stiles, Esq., who, after being duly sworn by me, the truth, the whole truth, and nothing but the truth to speak in regard to the matters in controversy in the suit aforesaid, did then and there on his oath, depose as follows, to wit:

Question 1st. What is your age, and what is your occupation?

Answer to 1st question, by John Stiles. I am fifty-two years of age. My occupation is that of a farmer, I am also a County Commissioner and a Justice of the peace, for the County of Red River and State of Texas.

Question 2d to John Stiles. Were you acquainted with Samuel Hemphill. If so, what was his character where he lived for honesty and veracity?

Answer to 2d question. I was well acquainted with Samuel Hemphill. He lived about three hundred yards from my house, during the whole time that he resided in this State, and up to the time he removed from this State, which was sometime in the year 1846. His character for honesty and veracity was as bad as it could be, and I would not believe him on his oath in a court justice from my knowledge of his character.

Question 3d to John Stiles. Did you ever hear Samuel Hemphill say anything of a pre-emption right he had sold to Josiah Garland in Fisher's Prairie in Arkansas, and did said Hemphill and Garland go to your house for said Hemphill to make an affidavit concerning said pre-emption right; and was the nature of his excuse for not going, and did Garland offer to pay him for his services and trouble in going to see the corners and section lines of said pre-emption after the lands were surveyed, and all the conversation as near as you now recollect?

Answer to 3d question by Stiles. I have heard Samuel Hemphill speak of a pre-emption right which he had sold to Josiah Garland, in Fisher's Prairie, frequently. The said Hemphill and Garland came to my house together, and the said Hemphill made

an affidavit before me as a Justice of the Peace, that he had been thrown from a horse or mule and was not able to travel to the land office at Washington and view the lines and corners of the land which he had sold to the said Garland, or his claim to the same by pre-emption. The said Garland offered to get a carriage and put a feather bed into it, and haul him down, and offered to pay him any amount in reason if he would go. He told Hemphill that two hundred dollars would be no object to him besides his expenses, and told him the said Hemphill that if he would go it would put an end to a troublesome lawsuit which he was fearful he would get into if he did not go and prove up his pre-emption to the said lands, for which he the said Garland held the said Hemphill's bond for a large sum, in which bond the said Hemphill had bound himself to prove up the said pre-emption for the said Garland at the proper time, to wit: when the land should be surveyed and come into market. He the said Hemphill compelled the said Garland to take an oath before me that he would destroy the said bond or would not sue him on the same before he the said Hemphill would make his affidavit as aforesaid. Mr. Garland soon afterwards came to the said Hemphill's house, and got him to go somewhere in Arkansas, and fill his application for the aforesaid pre-emption, which he did, and after an absence of some two or three days, he came back and boasted that he had made the said Garland pay him two hundred dollars for two or three days service.

Question 4th to John Stiles. Have you examined the instrument of writing marked "A", and are you acquainted with handwriting and signature of Philip Duty, Samuel Hemphill and Andrew Hemphill, and do you believe the same to be their signatures.

Answer to 4th question by Stiles. I believe the signature of Philip Duty and Samuel Hemphill to be genuine, and in their own handwriting, that of Andrew Hemphill I do not know.

Further this deponent saith not.

JOHN STILES.

And at the same time and place before me also appeared Edward West, who, after being duly sworn by me, the truth, the whole truth and nothing but the truth to speak, in regard to the matters in controversy in the suit aforesaid, did then and there on his oath depose and say as follows, to wit:

Question 1st. What is your age, and what is your occupation?

Answer to 1st question by West. I was forty-seven years old last January. My occupation at present is that of a farmer. I have formerly been Sheriff of Red River County for eight years.

Question 2d. Were you acquainted with Samuel Hemphill, what was his character where he lived, for honesty and veracity?

Answer to 2d question. I was well acquainted with Samuel Hemphill, having had many opportunities of knowing him in my

business transactions with him as Sheriff. I do not believe he was honest, and would not believe him on oath, in a court of Justice, if he was in the least interested in swearing a lie.

Question 3d. Have you examined the instrument of writing marked "A," if so, do you believe the signatures of Phillip Duty, Samuel Hemphill, and Andrew Hemphill, to be their hand writing and signatures?

Answer to 3d question, by E. West.

I am acquainted with the signature of Phillip Duty, and believe the same to this document to be in his own hand. I am also acquainted with the signature of Samuel Hemphill, and am certain that the signature in question was done by himself. The hand writing of Andrew Hemphill I am not acquainted with. Further this deponent saith not.

EDW'D. WEST.

And at the same time and place, before me, also appeared George H. Bayley, a witness known to me to be of lawful age, being to me at the time and place produced, and being by me first duly sworn the truth, the whole truth, and nothing but the truth, to testify in regard to the matters in controversy in the suit aforesaid, did then and there, on his oath, depose as follows, to wit:

Question 1st, to George H. Bayley. What is your age, and what is your occupation?

Answer to 1st question, by G. H. Bayley.

I am forty-five years old, and a farmer by occupation.

Question 2d, to the same. Were you acquainted with Samuel Hemphill, if so, what was his character where he lived, for honesty and integrity?

Answer to 2d question. I was well acquainted with Samuel Hemphill. I never believed him to be honest, and for a while before he left the county, I could not have believed him, neither on oath or otherwise.

GEORGE H. BAYLEY.

And at the same time and place, before me, also appeared Almann M. Alexander, a witness known to me to be of lawful age, being to me at the same time and place produced, and being by me first duly sworn to testify, and the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there on his oath depose and say as follows, to wit:

Question 1st. Do you know where Phillip Duty is at this time, or where you suppose he is?

Answer to 1st question. Phillip Duty started to Shreveport, in Louisiana, for a load of goods for me, and I suppose he is some-

where on the road, between here and that place. He left on Sunday, the 14th instant.

Further this deponent saith not.

A. M. ALEXANDER.

THE STATE OF TEXAS, } *S. Ct.*
County of Red River. }

I, Hugh F. Young, Chief Justice, duly elected and qualified, in and for the county of Red River, and State of Texas, do hereby certify and make known that the foregoing depositions of J. W. P. McKenzie, Wade H. Viening, John Stiles, Edward West, George H. Bayley, and Almann M. Alexander, were taken before me on the 18th day of October, A. D., 1849, between the hours, and at the place in the caption thereof above mentioned; that the examination, responses, and statements of each deponent were reduced to writing in my presence, and the said deponents sworn to and subscribed in my presence at the and place aforesaid, and that said deponents are residents of the county of Red River and State of Texas.

In testimony whereof, I Hugh F. Young, Chief Justice, do hereunto set my hand at the Clerks, within the State of Texas, this 18th day of October, A. D., 1849.

HUGH F. YOUNG,
Chief Justice, R. R. Co.

THE STATE OF TEXAS, }
County of Red River. }

I, Hugh F. Young, Chief Justice, within, and for the county aforesaid, do hereby certify that, William Wynn, the plaintiff in the aforesaid cause, was present at the taking of the aforesaid depositions, and the questions and answers propounded to, and made by each deponent, was read to him, and he was asked in each case, if he had any question to put to the witnesses.

In testimony whereof, I have hereunto set my hand at Clarksville, this, the 18th day of October, A. D., 1849.

HUGH F. YOUNG,
Chief Justice, R. R. County,

THE STATE OF TEXAS, }
County of Red River. }

I, George F. Lawton, Clerk of the County Court, within, and for the county of Red River, State of Texas, duly elected and commissioned as such, Clerk and Keeper of the seal of said office, do hereby certify that Hugh F. Young, whose official signature appears to the foregoing certificate, is, and was, at the time of sign-

ing the same, Chief Justice of the aforesaid county, duly elected and commissioned as such, and that his signature is genuine, and all his official acts, as such, are entitled to full faith and credit.

Witness my official signature, and the impress of the seal of my office, at Clarksville, in the State of Texas, this, the 19th day of October, A. D., 1849, and of the Independence of the United States, the 74th year.

[SEAL.]

GEORGE F. LAWTON,
Clerk.

Opened by me, March 9, 1850.

PIKE.

Depositions of witnesses on the part of defendant taken on the 10th day of October, 1849, in the town of Clarksville, in the State of Texas, appear in words and figures following, to wit:

Depositions of witnesses taken and subscribed before me, Alexander M. Clark, a Justice of the Peace within and for the county of Red River, and State of Texas, duly commissioned as such Justice of the Peace, on Thursday the 18th day of October, A. D., 1849, between the hours of 7 o'clock, A. M., and 7 o'clock, P. M., of said day at the Court House in the town of Clarksville, in the county of Red River, in the State of Texas, in pursuance of a notice hereto annexed, and to be read as evidence in a certain cause, depending before Messrs. Pike and Curran, as arbitrators and of the State of Arkansas, wherein William Wynn is plaintiff, and Josiah Garland is defendant, on the part of the defendant.

Question 1st to Hugh F. Young. What is your age and occupation?

Answer to 1st question. I am forty years of age. My occupation is that of Chief Justice of the county, and a deputy clerk in the office of the District clerk of the county of Red River, and State of Texas.

Question 2d to the same. Were you acquainted with Samuel Hemphill. If so, what was his character for honesty and veracity? Did you have a conversation with the said Hemphill relative to a pre-emption right which he had sold to Josiah Garland in Fisher's prairie in Arkansas?

Answer to 2d question by the same. I was well acquainted with Samuel Hemphill from year 1841 up to the year 1846, at which time he left the State, and I have known nothing of him since. At first I believed him to be honest, but soon ascertained to

the contrary, and at length came to believe that there was not a greater scoundrel left unhung, and I could not under any circumstances have believed him on his oath. He told me at one time he had lived in Fisher's prairie, and I think he said he had sold his preemption to a man by the name of Garland, but that the said Garland had not paid him a fair price for his improvements, and if I would go to Washington, Arkansas, and enter the land he thought I could hold it, and that he would assist me in doing so, if I would divide the profits with him, he, the said Hemphill, representing the matter to me in such a way as to induce me to believe that there would be no dishonesty in the transaction, and having some business at the land office in Washington, I examined the situation of the land in question, and found that there was something wrong intended on the part of the said Hemphill. I determined to have nothing to do with the matter.

HUGH F. YOUNG.

I, Alexander M. Crooks, an acting and duly commissioned Justice of the Peace in and for the county of Red River, State of Texas, do hereby certify that the foregoing deposition of Hugh F. Young was taken before me on the 18th day of October, A. D., 1849, between the hours and at the place in the caption thereof above mentioned; that the examination, responses and statements of the said deponent was reduced to writing in my presence at the time and place aforesaid; and that the deponent is a resident of the county of Red River, and State of Texas.

In testimony whereof I, Alexander M. Crooks, Justice of the Peace, de hereunto set my hand, at Clarksville, in the State Texas, this 18th day of October, A. D., 1849.

A. M. CROOKS,
J. P.

N. B. The foregoing deposition was taken by me in pursuance of the notice annexed to the deposit ons taken by the Chief Justice of Red River county, and State of Texas, and herewith enclosed, October 18, 1849.

A. M. CROOKS,
J. P.

THE STATE OF TEXAS, }
County of Red River, }

I, George F. Lawton, Clerk of the county Court, in and for the county of Red River, and State of Texas, duly elected and commissioned as such Clerk and the keeper of the seal of said Court, do hereby certify that Alexander M. Crooks, whose official signature

appears to the foregoing certificate is, and was at the time of signing the same, a Justice of the Pecce, duly elected and commisioned in and for the county of Red River, and State of Texas, and that his signature is genuine and that all his official acts are entitled to full faith and credit.

[SEAL.] Witness my official signature, the impress of the Seal of my office, at Clarksville, in the State of Texas, this the 19th day of October, A. D., 1849, and of the Independence of the United States the 74th year.

GEORGE F. LAWTON,
Clerk.

Opened by me, March 9, 1850.

PIKE.

Depositions of witnesses taken on the 8th day November, 1849, in pursuance of notice, and said notice and depositions appear in words and figures following, to wit:

COL. WILLIAM WYNN,

Take notice that I will attend at the office of Thomas Hubbard, Esqr., in the town of Washington, county of Hempstead, and State of Arkansas, on the 8th day of November next, between the hours of 8 o'clock A. M. and 6 o'clock, P. M., of said day, to take the depositions of witnesses to be read in evidence in my behalf in a certain cause heretofore pending in the Circuit Court in and for the county of Lafayette, on the chancery side thereof, but now referred to Pike and Curran as arbitrators, wherein you are plaintiff, and I am defendant, and shall continue from day to day, till all are taken, when and where you can attend, and cross-examine. This 31st day October, A. D., 1849.

J. GARLAND.

I executed the within notice on the within named William Wynn, on the 2d day of Nov., A. D., 1849, at his residence, viz., Lafayette county, Arkansas, by giving to him a true copy of this the original in my hands.

W. P. CRYER.
Sheriff.

By A. W. KELLER,
D. Sheriff.

Executing, - - - - -	$0 50.
Travelling 48, - - - - -	1 44.
Ferriage, - - - - -	1 00.
	$2 94.

Deposition of witnesses taken and subscribed before me Richard B. Purdom an acting Justice of the Peace for the County of Hempstead, in the State of Arkansas, duly commissioned as such on the 8th day of November, 1849, between the hours of 8 o'clock A. M., and 6 o'clock, P. M., of said day, at the office of Thomas Hubbard, in the town of Washington, in the county and State aforesaid, in pursuance of the annexed notice, and to be read as evidence in a certain cause heretofore pending in the Circuit Court of Lafayette County, on the Chancery side thereof, but now referred to Pike and Curran as arbitrators, whereof William Wynn is plaintiff, and Josiah Garland is defendant, on the part of the defendant.

Witness, William Crabtree known to me to be of lawful age, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there on his oath aforesaid, depose as follows, to wit:

Question by defendant. Are you acquainted with Andrew Hemphill, if so, how long, and what is his general character for honesty and veracity?

Answer. I am acquainted with Andrew Hemphill, and have been so about fifteen years, and his general character for honesty and veracity was not good.

Question by same. Would you believe him on oath?

Answer. I could not if interested.

Cross-Examined by Plaintiff's Attorney.

Question by Plaintiff's Attorney. Do you reside in the neighborhood of said Andrew Hemphill?

Answer. I do not.

Question by same. Did you ever reside in his neighborhood?

Answer. I lived in 12 or 14 miles of him, when we both resided in Lafayette County, in this State, which is 15 or 18 years ago.

Question by same. Do you know the character of said Hemphill for honesty and veracity in the neighborhood where he now resides?

Answer. I do not, I have heard it was bad.

Further this deponent saith not.

WILLLIAM CRABTREE.

Sworn to and subscribed before me, this 8th Nov., 1849.

RICHARD B. PURDOM.
J. P.

The further taking of these depositions is continued until tomorrow, the 9th Nov'r., 1849.

RICH'D B. PURDOM,
J. P.

Friday morning, 9th Nov'r., 1849, ten o'clock this day, was produced to me at the place aforesaid, John N. Reed, a witness on the part of the defendant, who being by me duly sworn to speak the truth, the whole truth, and nothing else but the truth, between the parties in the above named cause, deposeth and says, as followeth:

To the 1st interrogatory by defendant. Are you acquainted with the general character of Andrew Hemphill?

Answer. I am acquainted with his general character, and it is bad in his neighborhood. *I know I heard* of him ever since 1844, and I would not believe him on oath.

Question by pl'ff's atto. Are you acquainted with his character from personal intercourse with him?

Answer. I never had, nor never would have anything to do with him.

Question. Do you know of any personal act of dishonesty on the part of Hemphill?

Answer. I do not, as I never had any personal dealings with him, and my knowledge of the character of Hemphill is from what I have heard other persons say.

Further this deponent says not.

JOHN N. REED.

Sworn and subscribed to before me,
this 9th Nov'r., 1849.

RICH'D. B. PURDOM,
J. P.

Friday morning, the 9th Nov., 1849, half after 11 o'clock, A.M., was produced to me at the place aforesaid, John W. Williams, a witness on the part of the defendant, who being by me first duly sworn to speak the truth, the whole truth, and nothing else but the truth, between the parties in the above named cause deposeth and says: To the first interrogatory by defendant,

Are you acquainted with the general character of Andrew Hemphill, and if so, what is his general character where he is known?

Answer. I have been acquainted with Andrew Hemphill about 15 or 16 years. So far as I have known him, his character has been a swindling *having mean*, and endeavoring to take all advantages he can, and when he is interested I would not believe him on oath.

Question by pl'ff's, atto. What is his character for private dealing, for integrity, &c.?

Answer. In his private dealing I mean I never heard anything to the contrary, but he paid his debts.

Question by same. Do you know of any act of moral turpitude on the part of Andrew Hemphill which would induce you to disbelieve him when under oath?

Answer. I know of no particular fact which would induce me to disbelieve him on oath, but from his general character, and have been acquainted with him 15 or 16 years, I would not believe him when he was interested.

Further this deponent say not.

J. W. WILLIAMS.

Sworn and subscribed 9 Nov'r., 1849.

RICHARD B. PURDOM,
J. P.

Friday, the 9th of Nov'r., 1849, one o'clock, P. M., this day was produced to me at the place aforesaid, Hugh A. Blevins, a witness on the part of the defendant, who being by me first duly sworn to speak the truth, whole truth and nothing else but the truth, between the parties in the foregoing named cause, deposing and says as follows—

To the first interrogatory by defendant. Are you acquainted with the general character of Andrew Hemphill; if, so, what is his general character where known?

Answer. I am not acquainted with the general character of A. Hemphill. There was a boat burnt some years ago on Red River, since which time I heard much said about him, that he was not a clever man, of my own knowledge I know nothing.

Further this deponent says not.

H. A. BLEVINS.

Sworn and subscribed to, before me, this 9th Nov., 1849.

RICHARD B. PENDOM,
J. P.

THE STATE OF ARKANSAS,
Hempstead County.

I, Richard B. Pendom, an acting Justice of the Peace, duly commissioned as such, for the county of Hempstead, and the State of Arkansas do hereby certify and make known, that the foregoing depositions of William Crabtree, John N. Reed, John W. Williams and Hugh A. Blevins, were taken before me, on 8th & 9th days of November, 1849, between the hours and at place in the caption hereof above mentioned, that the examinations, responses and statements of each of said deponents were reduced to writing in my presence, and by the said deponents respectively sworn to at the time and place aforesaid, and that the said deponents are residents of the state of Arkansas.

In testimony whereof, I Richard B. Pendom, Justice of the Peace, do hereunto set my hand at Washington, the state of Arkansas, this 10th day of November, 1849.

RICHARD B. PENDOM,
J. P.

Came by mail, opened by me, March 9, 1856.

PIKE.

Depositions taken on the 26th day of March, 1850, on part of defendant, in pursuance of notice, said notice and depositions appearing, in words and figures following, to wit:

COL. WILLIAM WYNN,

Take notice that I shall attend at the Court House in the town of Arkadelphia, county of Clark, and state of Arkansas, on the 26th day of the present month (March) between the hours of eight o'clock A. M., and six o'clock P. M., of said day, to take the depositions of witnesses, to be read as evidence on my behalf, in a certain cause heretofore pending in the Circuit Court in and for the County of Lafayette, on the Chancery side thereof, but now referred to Pike and Curran, as arbitrators, wherein you are plaintiff, and I am defendant, and shall continue from day to day till all are taking, when and where you can attend and cross-examine, this 18th day of March, A. D., 1850.

J. GARLAND.

This is to certify that I placed a true copy of the above notice in the hands of Col. William Wynn, on the 18th day of March, 1850.

L. L. ALFORD.

The execution of this notice appears by the schedule hereunto annexed.

J. WM. M. BURCE,
J. P.

STATE OF ARKANSAS, }
County of Clark. }

Depositions of a witness taken and subscribed before me, Wm. M. Bruce, an acting Justice of the Peace, for the county of Clark, in the State of Arkansas, duly commissioned as such on the 26th day of March, A. D., 1850, between the hours 8 o'clock, A. M., and 6 o'clock, P. M., of the said day, at the court house, in the town of Arkadelphia, in the county of Clark, and State of Arkansas in pursuance and in accordance of a noti e hereto annexed, and to be read as evidence in a certain cause now pending in the

Circuit Court, as chancery sitting, of the county of Lafayette, and the State of Arkansas, wherein William Wynn is plaintiff, and Josiah Garland is defendant, (on the part of the defendant.)

John H. Peake, a witness know to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn, to testify the truth, the whole truth and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there on his oath aforesaid, depose as follows, to wit:

I was acquainted with Samuel Hemphill and Phillip Duty, in the year 1828 Phillip Duty sold to Samuel Hemphill an improvement in Fisher's Prairie. I recognize my signature to the deed, which is now before me.

JNO. H. PEAKE.

Attest,

J. WM. M. BRUCE,
J. P.

STATE OF ARKANSAS, }
County of Clark. }

I, Wm. M. Bruce, an acting and duly commissioned Justice of the Peace, in and for the County of Clark, and State of Arkansas, do hereby certify and make known that the foregoing deposition of John H. Peake, were taken before me on the 26th day of March, A. D. 1850, between the hours and at the time and place in the caption hereof above mentioned; that the said examination, and statements of the said deponent, were reduced to writing in my presence, and by the said deponent *respectfully* sworn to and subscribed in my presence, at the time and place aforesaid, and that the said deponent is a resident of the county of Clark, and State of Arkansas.

In testimony whereof I, William M. Bruce, Justice of the Peace, do hereunto set my hand at Arkadelphia, in the State of Arkansas, this 26th day of March, A. D., 1850.

J. WM. M. BRUCE,
J. P.

The annexed paper marked A, is a true copy of the deed spoken of in this depositions.

J. WM. M. BRUCE,
J. P.

Said deed marked A, appears in words and figures following, to wit:

Know all men by these presents, that I, Philip Duty, of the County of Hempstead and Territory of Arkansas, for and in con-

sideration of the sum agreed upon, have this day bargained, sold and conveyed, and by these presents, do bargain, sell, and convey unto Samuel Hemphill, of the County and Territory aforesaid, all my right, title, claim and interest to a certain improvement, whereon I now reside situated, lying, and being in Fisher's Prairie, on the western bank of Red River, in the County and Territory aforesaid, and do further bind myself, my heirs, &c., to warrant the right and peaceable possession of the same, with all and singular, the advantages arising from said settlement, either in land or otherwise from the claims of all and every person, (the right of Government, excepted,) unto the said Samuel Hemphill, his heirs, &c., forever.

In witness whereof, I have hereunto set my hand and seal this 31st January, 1828.

PHILIP DUTY.

Attest, JOHN H. PEAKE,

Endorsed on said deed are the following assignments, to wit:

"For a full consideration to me in hand paid, I do assign the within bill of sale to Andrew Hemphill, and warrant and defend the same to the said Andrew Hemphill and his heirs forever.

October 27, 1831.

S. HEMPHILL.

his

BRYANT ⋈ HOLMES.

mark.

For a full consideration to me in hand paid, I do assign all my right to the within bill of sale to Samuel Hemphill and heirs forever.

May the 6th, 1835.

ANDREW HEMPHILL, [SEAL.]

STATE OF ARKANSAS, }
Clark County. }

I do hereby certify that the above and foregoing is a true copy of the deed spoken of in the annexed deposition and the same one marked "A."

Given under my hand this the 26th day of March, A. D., 1850.

WM. M. BRUCE,
J. P.

Justice's fees $1 25, paid by defendant.

Opened Oct. 25th, 1850.

By J. M. CURRAN,
Abr.

Notice from compl't to def't., of the survey of the land in dispute made in pursuance of an order of the Court, appear in words and figures following, to wit:

To JOSIAH GARLAND, ESQR.

Take notice, that in pursuance of an order of the Lafayette Circuit Court, at the January term thereof, A. D., 1848, I will have a survey made of the lines of the N. E. ¼ of sec. 18, in T. 16 S. of R. 25 W., (the land in controversy between us,) by James S. Conway, Esqr., on the 29th day of April, 1848, when and where you may attend if you think proper.

WILLIAM WYNN.

I executed the within notice by then and there going to usual residence of the within named Josiah Garland, in Lafayette Co., Arks., on the 13th day of April, A. D., 1848, by delivering a true copy of the aforesaid notice to a white member of his family, over the age of fifteen years.

A. C. OWEN,
Sheriff.
By WILLIAM GAUT,
Dep't. Sheriff.

Filed on the 14th day of April, 1848.

STATE OF ARKANSAS, }
County of Lafayette. } *ss.*

I, Alexander Byrne, Clerk of the Circuit Court, in and for the County of Lafayette aforesaid, do hereby certify that the within and foregoing transcript composing the three hundred and sixty-four pages next preceding this certificate, is a true and perfect copy of all the papers, records and proceedings had in the Lafayette Circuit Court in Chancery, in the case of William Wynn against Josiah Garland.

[SEAL.]

In testimony whereof, I have hereunto set my hand as such Clerk and affixed the seal of said Court, at office in the town of Lewisville, this July 2d, 1852.

A. BYRNE,
Clerk.
By C. LEIGH,
D. C.

And afterwards, to wit: at a Supreme Court of said State, begun and held at the Court House, in the city of Little Rock, on

the first Monday in January, A. D., 1853,—on Wednesday, 12th day of January, in said term, were the following proceedings:

At this day came the said appellee by his solicitor, and on motion it is ordered that he have leave to file his motion to dismiss the appeal in this cause; and said motion is filed and submitted.

Which said motion is in the following words—

And said appellee comes and moves the court to dismiss this appeal because the decree appealed from is not a final decree.

CURRAN,
For Appellee.

And afterwards, to wit—on Saturday the 19th day of February, of said term, were the following proceedings.

The court being sufficiently advised of the motion herein, and being of opinion that the decree appealed from is final, it is ordered that said motion be overruled.

And afterwards, to wit—on Saturday, the 3d day of April, of said term, were the following proceedings,

At this day comes the said appellant by his solicitor, and on motion, it is ordered that his assignment of errors be filed, and thereupon the same is filed—and at the same time comes said appellee by his solicitor, and files his joinder in error.

Which said assignment of errors is in the following words—

And the said appellant comes and says, that in the record and proceedings aforesaid, and in giving the decree aforesaid, there is manifest error in this, to wit—

First. That said Circuit Court by its decree denied to the said appellant the relief prayed by him.

Second. That said Circuit Court by its said decree, dissolved the injunction theretofore granted and dismissed said bill, and gave the said appellee the benefit of said judgment at law.

Third. That said Circuit Court adjudged that the right and title of the appellee in and to the land in controversy was better than, and in equity parament and to be preferred to that of said appellant.

Fourth. That the said decree was rendered in favor of the appellee against the appellant—whereas, by the law of the land, the same should have been rendered in favor of said appellant against said appellee.

Wherefore and for other errors in the record and proceedings aforesaid apparent, the appellant prays that the decree aforesaid, in form aforesaid given and rendered may be reversed, annulled, and altogether held for nought, the appellant restored to all things which he has lost by occasion thereof—and that the court here may proceed to render such decree as the said Circuit Court ought to have rendered and given.

PIKE & CUMMINS,
Solicitors for W. Wynn.

And said joinder in errors is in the following words:

And said appellee comes and says there is no error in record and proceedings, nor in giving and rendering the decree aforesaid, and he prays that said decree may be in all things confirmed.

WATKINS & CURRAN,
Attys. for Garland.

And afterwards, to wit: At a Supreme Court of said State, begun and held on the first Monday in July, A. D., 1853, to which term this cause was continued by operation of law, on Monday, 11th day of July, was the following proceedings:

At this day come said appellant and appellee, by their solicitors, and this cause is submitted, and by the Court taken under advisement.

And afterwards, to wit: At a Supreme Court of said State, begun and held on the first Monday in July, A. D., 1854, to which term this cause was coutinued by operation of law, and Thursday, the 3d day of August, of said term, were the following proceedings, to wit:

At this day comes said appellee by his solicitor, and presents to the Court here, his motion snpported by affidavit, and agreed to by said appellant by his solicitor, suggesting several matters of diminution in the transcript of the record in this case filed, and praying for a special writ of certiorari to be directed tot he Clerk of said Circuit Court, commanding him to perfect said transcript, and said motion is filed; and the court being sufficiently advised thereof, it is ordered that a special writ of certiorari returnable on the 3d Monday in September next, be issued according to the motion of said appellee herein.

And said suggestions, motions, affidavit and agreement, are in the following words:

And said appellee comes and suggests, and shows to the Court here, that the transcript of the record and proceedings of said cause in the said Circuit court in chancery, returned and filed in this court for adjudication, is defective and diminished, in this:

That the second deposition of Morgan Cryer, and also the depositions of Wm. H. Garland, Joshua L. Howard, James H. Abraham, John G. Fuller, and Thomas M. Edwards, and the plat made part thereof, taken and read in evidence on the trial in the court below, on the part of said Garland, are omited.

And said transcript is also defective in this:

That by leave of the court below, before replication entered thereto, the original answer was amended by interlineation and resworn; but the clerk of the circuit court in making the transcript

has failed and omited to incorperate said amendment in said orignal answer, and has detached the same and inserted it—a different part of the transcript, and disconnected with the original answer.

And said transcript is also defective and diminished in this:

That the clerk of said Circuit court has failed and omitted to insert the answer of the defendant as a substantive document or pleading, but has merely copied the same as a part of a bill of exceptions taken in the court below.

Wherefore said appellee prays the court to grant a special writ of certiorari, commanding the clerk of said Circuit court to perfect said transcript.

CURRAN & GALLAGHER.

IN THE SUPREME COURT:

I, J. M. Curran, do state on oath that I was counsel in this case in the court below, and I verily believe that the transcript filed in this cause is defective and diminished in the particulars above specified.

And I do further state that when the assignment and joinder were filed (in consequence of the transcript being voluminous and badly arranged and written as to make it very difficult to determine whether it was corret or not), it was distinctly agreed between the counsel for appellant and myself that the assignment and joinder should be filed and the cause submitted without prejudice to the right of either party, have a writ of certiorari in case any defect should at any time be discovered.

J. M. CURRAN.

Sworn to and subscribed before me, the 3d August, 1854.

GEO. C. WATKINS,
Chief Justice.

I agree that the certiorari may issue as prayed for, returnable at as early a day as practicable.

ALBERT PIKE,
Counsel for Wynn.

STATE OF ARKANSAS,
In the Supreme Court.

The State of Arkansas, to the Clerk of the Circuit Court of Lafayette County, in said State, greeting:

Whereas, at the July Term, A. D., 1854, of the Supreme Court of said State, in a cause therein pending, wherein William Wynn is appellant, and Josiah Garland is appellee, on appeal from Lafayette Circuit Court in Chancery, the said appellee presented his sug-

gestion, that the transcript of the record and proceedings, of said cause, in said Circuit Court in Chancery, returned and filed in our Supreme Court for adjudication, is defective and diminished in this: that the second deposition of Morgan Cryer, and also, the depositions of William H. Garland, Thomas H. Edwards, Joshua L. Howard, James H. Abraham, and John G. Fuller, and the plat made part thereof, taken and read in evidence on the trial in said Circuit Court, on the part of said Garland, are omitted. That the original answer was amended by interlineation, and re-sworn; but that the Clerk of the Circuit Court in making said transcript has failed and omitted to incorporate said amendment, in said original answer, and has detached the same and inserted it in a different part of the transcript, disconnected with the original answer, and that the Clerk of said Circuit Court, has failed and omitted, to insert the answer of the defendant, as a substantive document as pleading, but has merely copied the same as a part of a bill of exceptions taken in the Court below; and praying for a special writ, of certiorari, commanding the Clerk of said Circuit Court, to perfect said transcript: whereupon our Supreme Court, being sufficiently advised thereof, did order, that a special writ of certiarari, returnable on the 3d Monday in September next, be issued according to the motion of said appellee. You are therefore hereby commanded, that you certify to our Supreme Court, at the Court House, in the city of Little Rock, on the 3d Monday in September next, a full, true, and complete transcript of the second deposition of Morgan Cryer, and of the depositions of William H. Garland, Thomas H. Edwards, Joshua L. Howard, James H. Abraham, and John G. Fuller, and of the plat made part thereof, taken and read in evidence, on the trial in the Court below, on the part of said Garland, and also a true and perfect transcript, of the original answer, as amended, by interlineation and re-sworn, as the same are on file in your office, that our Supreme Court, on consideration of a full and perfect record of said cause, may do therein, what of right, and according to equity, should be done. Hereof, fail not, &c., and have you then and there, this writ attached to such transcript, and make due return under your hand and seal of office, of your execution thereof.

[L. S.] In testimony whereof, I, Luke E. Barber, have hereto set my hand, and affixed, the seal of said Court, at my office in the city of Little Rock, this 11th day of August, A. D., 1854.

L. E. BARBER,
Clerk.

And afterwards to wit: on the 11th Oct., A. D., 1854, the clerk of said Circuit Court made the following return of said writ of certiorari:

STATE OF ARKANSAS, }
County of Lafayette. }

I, Alexander Byrne, Clerk of the Circuit Court, in and for the county and State aforesaid, do hereby certify that the execution of this writ appears, by the transcript annexed hereto.

[L. S.]

In testimony whereof, I have hereunto set my hand as Clerk, and affixed the seal of said Court, at Lewisville, this, the 8th day of September, 1854.

A. BYRNE,
Clerk.

By J. M. MONTGOMERY,
D. C.

And the transcript attached to said writ of certiorari, is as follows:

LAFAYETTE CIRCUIT COURT, IN CHANCERY.

WILLIAM WYNN,
vs.
JOSIAH GARLAND.

The original answer of Josiah Garland, as amended and resworn.

IN THE LAFAYETTE CIRCUIT COURT,
To July Term thereof, A. D., 1847.

The answer of Josiah Garland, to the Bill of Complaint, exhibited against him in this Court, by William Wynn, Complainant.

This defendant now and at all times hereafter, saving and reserving to himself, all and all manner of benefit and exceptions to the many errors, and imperfections in said Bill of Complainant, contained, and set forth for answer thereto, or to so much thereof, as he is advised it is material for him to make answer unto, answering says—that he cannot state from his own knowledge, but he has been informed, and admits it to be true, that said Jeans, on or about the time, mentioned in said bill, removed to, and settled upon as a portion of the public lands of the United States, then unsurveyed, lying and being in the county of Lafayette, and state of Arkansas, on the south side of Red River, on what was then, and still is known as Fisher's Prairie, and immediately commenced opening land, and making an improvement on said land, and continued to

reside upon and cultivate said land until on or about the year, A. D., 1832, or there abouts, as this respondent is informed, as he did not come to the state of Arkansas until on or about the year, A. D., 1833, and consequently from his own knowledge, he knows nothing in regard to the facts aforesaid.

That at the time this respondent came to the State of Arkansas as aforesaid, the overseer and slaves of said Jeanes were upon and cultivating a portion of the quarter section of land, hereinafter named and described, and which land, said respondent has been informed, and admits it to be true, was a part of the same quarter section settled by Jeanes as aforesaid. Respondent has likewise been informed, that Jones purchased said improvement from said Janes, but respondent does not know, and cannot state from information, or otherwise for what consideration. Respondent has been informed, and he believes it to be true, that said Jones, shortly after said purchase as aforesaid, placed his slaves upon and cultivated said land. Respondent does not know either from information or otherwise, whether or not said Jones at the time he purchased said imimprovement had notice of any adverse claim or right of pre-emption on the same tract of land, which was at that time unsurveyed public land, but respondent avers the fact to be, that since said land has been surveyed, it appears that one Samuel Hemphill, several years before that time had settled upon and was entitled to a right of pre-emption to said tract of land, under and by virtue of an Act of Congress passed on the 29th day of May, A. D., 1830, as will be hereinafter more particularly stated and set forth.

Respondent admits it to be true, that said Jones continued to cultivate a portion of said tract of land until some time in the year, A. D., 1835, but he does not know, and cannot state from information and belief or otherwise, whether he made any futher or other improvements on said land, other than such as had been made by said Janes. Respondent states that he believes it to be true, that said Jones, sometime in year, A. D. 1835, sold his improvement in Fisher's prairie, including a portion of the quarter section of land, mentioned in said bill to said complainant, likewise including slaves, stock and farming utensils, for which this respondent was informed he was to pay the price of sixty thousand dollars; but respondent has been informed that there was some difficulty which grew out of said sale, and owing to that difficulty there was finally a compromise made by which complainant was to pay the sum of forty thousand dollars, or thereabouts, for said improvement, slaves, &c., being about twenty thousand dollars less than his original contract. Said respondent says that about the time said sale was made to said complainant by said Jones, said complainant took possession of said improvement, and kept his slaves thereon, and has continued so to do up to this time; but respondent positively denies that said complainant actually became a resident of the State of Arkansas, until on or about the year, A. D., 1841, and from which time respondent admits he

has resided on said land, and that from the time of said purchase, up to the time when he permanently settled upon said land, that he made occasional visits to the State of Arkansas, but respondent did not consider him a citizen of the State of Arkansas, until or about the last mentioned year, 1841. Respondent admits to be true, that sometime in the year 1840, the United States caused the said Township to be surveyed, in which said farm and improvements were situated, preparatory for sale, and that by said survey, the number and description of the land upon which said farm and improvement were situated was ascertained. Respondent admits it to be true, that a part of said farm, improvement and settlement, were and are upon the N. E. ¼ of sec. 18, in Township 16, S. of R. 25 West, in the district of land subject to sale at Washington, Arkansas, and at the time said survey was made the dwelling house, some negro cabins, and other out buildings, were situated upon said quarter section; and about twenty-five or thirty acres of said land was claimed and in cultivation by said complainant at time, but he has since that period extended his improvement on said land, and now has in cultivation, some fifty or more acres of the same. Respondent from information derived from the paper on file in the said office, admits it to be true that on the 20th day of Nov., A. D., 1842, the complainant with his witnesses appeared at the said office in Washington, Arkansas, and made the affidavits set forth in the exhibit marked A., No. 1, referred to and made a part of said bill of complaint, and respondent admits it to be true that the Register and Receiver of the land office, did on the day and year aforesaid, by mistake and ignorance of the fact, that any other person was entitled to a pre-emption thereon under and by virtue of any prior Act of Congress, granted and allowed a pre-emption to said complainant in his own right, under and by virtue of the pre-emption Act of 1838. Respondent believes and admits it to be true, that the exhibit A, No. 1, referred to and made a part of said bill is correctly copied from the original on file in said office at Washington, Arkansas. Respondent denies that said affidavits and proofs in relation to said pre-emption were taken before both the Register and Receiver of the said office at Washington. Respondent has been informed, and believes it to be true, that at the time said pre-emption was so illegally granted, as before stated, said complainant paid to the Receiver of public moneys at Washington, the Government price for said land, and received a certificate, a true copy of which is referred to in said bill, as exhibit B, No. 2. Respondent denies that said complainant by virtue of his proofs of said pretended right of pre-emption to said quarter section, or the payment of the purchase money aforesaid, as the Receiver's receipt aforesaid, as by virtue of any state of facts ever was or is entitled to a patent from the United States for said land, or that said complainant was prevented from obtaining the same, by the fraudulent Act or Acts, or the dishonest contrivances of this respondent as charged in said bill.

Respondent admits to be true, that a pre-emption was proven upon said quarter section of land, in the name of said Samuel Hemphill, by the procuremeet of this respondent, under the prior pre-emption law of 29th of May, A. D., 1830, in the manner, and under the circumstances hereinafter set forth, and not otherwise or differently. Respondent further avers that said Samuel Hemphill was justly and honestly entitled to a right of pre-emption, to said quarter section of land, under, and by virtue of a pre-emption law passed in the year 1830, as herein before stated.

Respondent further answering, says that said Hemphill resided on an adjoining quarter section, and actually caultivated and possessed a portion of the aforesaid quarter section of land, for many years prior to, and during the whole time and term of the years A. D., 1829 and 1830, and for several years thereafter, and that his right of pre-emption thereto, was paramount to that of complainant, or any other person under whom he claims. Respondent denies that said Samuel Hemphill left the county of Lafayette, in the year 1831 or 1832, as charged in said bill; but respondent admits that he purchased his right of pre-emption and improvement in the year 1833, and that said Hemphill left, and permanently moved from said county in the year 1834, and not before, and respondent further says, that often thereafter, he returned to, and visited said county. Respondent further answering says, that it is not true, as charged in said bill, that neither said Hemphill or himself had any idea that said Hemphill had a right of pre-emption to said land, which he cultivated as aforesaid, or that said Hemphill did not claim any right of pre-emption thereto, but on the contrary thereof, this respondent avers, that at the time he purchased said improvement of said Hemphill, he also purchased any right of pre-emption which he then had to public land in Fisher's Prairie, and it was then expressly agreed, that said Samuel Hemphill should prove up and establish any such rights of pre-emption at the proper time, for the benefit of this respondent.

Respondent further states, that sometime in the year A. D., 1834, said Samuel Hemphill removed to the county of Clark, in the state of Arkansas, and resided there for a number of years, but afterwards abandoned the United States, and removed to the Republic, now state of Texas, and has ever since, resided there, but at what time said Hemphill removed to said Republic of Texas, this respondent is unable to state from information or otherwise. Respondent does not know, and cannot state from information or otherwise, whether or not said Samuel Hemphill took the oath of allegiance to said Republic of Texas.

Respondent further answering says, said land was not surveyed until on or about the year A. D., 184 , and until that time, it was not known or ascertained that the improvement of the said Samuel Hemphill and Janes respectively would as they did fall upon the same quarter section of land; but it is not true that the said Hemp-

has resided on said land, and that from the time of said purchase, up to the time when he permanently settled upon said land, that he made occasional visits to the State of Arkansas, but respondent did not consider him a citizen of the State of Arkansas, until or about the last mentioned year, 1841. Respondent admits to be true, that sometime in the year 1840, the United States caused the said Township to be surveyed, in which said farm and improvements were situated, preparatory for sale, and that by said survey, the number and description of the land upon which said farm and improvement were situated was ascertained. Respondent admits it to be true, that a part of said farm, improvement and settlement, were and are upon the N. E. $\frac{1}{4}$ of sec. 18, in Township 16, S. of R. 25 West, in the district of land subject to sale at Washington, Arkansas, and at the time said survey was made the dwelling house, some negro cabins, and other out buildings, were situated upon said quarter section; and about twenty-five or thirty acres of said land was claimed and in cultivation by said complainant at time, but he has since that period extended his improvement on said land, and now has in cultivation, some fifty or more acres of the same. Respondent from information derived from the paper on file in the said office, admits it to be true that on the 20th day of Nov., A. D., 1842, the complainant with his witnesses appeared at the said office in Washington, Arkansas, and made the affidavits set forth in the exhibit marked A., No. 1, referred to and made a part of said bill of complaint, and respondent admits it to be true that the Register and Receiver of the land office, did on the day and year aforesaid, by mistake and ignorance of the fact, that any other person was entitled to a pre-emption thereon under and by virtue of any prior Act of Congress, granted and allowed a pre-emption to said complainant in his own right, under and by virtue of the pre-emption Act of 1838. Respondent believes and admits it to be true, that the exhibit A, No. 1, referred to and made a part of said bill is correctly copied from the original on file in said office at Washington, Arkansas. Respondent denies that said affidavits and proofs in relation to said pre-emption were taken before both the Register and Receiver of the said office at Washington. Respondent has been informed, and believes it to be true, that at the time said pre-emption was so illegally granted, as before stated, said complainant paid to the Receiver of public moneys at Washington, the Government price for said land, and received a certificate, a true copy of which is referred to in said bill, as exhibit B, No. 2. Respondent denies that said complainant by virtue of his proofs of said pretended right of pre-emption to said quarter section, or the payment of the purchase money aforesaid, as the Receiver's receipt aforesaid, as by virtue of any state of facts ever was or is entitled to a patent from the United States for said land, or that said complainant was prevented from obtaining the same, by the fraudulent Act or Acts, or the dishonest contrivances of this respondent as charged in said bill.

Respondent admits to be true, that a pre-emption was proven upon said quarter section of land, in the name of said Samuel Hemphill, by the procuremeet of this respondent, under the prior pre-emption law of 29th of May, A. D., 1830, in the manner, and under the circumstances hereinafter set forth, and not otherwise or differently. Respondent further avers that said Samuel Hemphill was justly and honestly entitled to a right of pre-emption, to said quarter section of land, under, and by virtue of a pre-emption law passed in the year 1830, as herein before stated.

Respondent further answering, says that said Hemphill resided on an adjoining quarter section, and actually caultivated and possessed a portion of the aforesaid quarter section of land, for many years prior to, and during the whole time and term of the years A. D., 1829 and 1830, and for several years thereafter, and that his right of pre-emption thereto, was paramount to that of complainant, or any other person under whom he claims. Respondent denies that said Samuel Hemphill left the county of Lafayette, in the year 1831 or 1832, as charged in said bill; but respondent admits that he purchased his right of pre-emption and improvement in the year 1833, and that said Hemphill left, and permanently moved from said county in the year 1834, and not before, and respondent further says, that often thereafter, he returned to, and visited said county. Respondent further answering says, that it is not true, as charged in said bill, that neither said Hemphill or himself had any idea that said Hemphill had a right of pre-emption to said land, which he cultivated as aforesaid, or that said Hemphill did not claim any right of pre-emption thereto, but on the contrary thereof, this respondent avers, that at the time he purchased said improvement of said Hemphill, he also purchased any right of pre-emption which he then had to public land in Fisher's Prairie, and it was then expressly agreed, that said Samuel Hemphill should prove up and establish any such rights of pre-emption at the proper time, for the benefit of this respondent.

Respondent further states, that sometime in the year A. D., 1834, said Samuel Hemphill removed to the county of Clark, in the state of Arkansas, and resided there for a number of years, but afterwards abandoned the United States, and removed to the Republic, now state of Texas, and has ever since, resided there, but at what time said Hemphill removed to said Republic of Texas, this respondent is unable to state from information or otherwise. Respondent does not know, and cannot state from information or otherwise, whether or not said Samuel Hemphill took the oath of allegiance to said Republic of Texas.

Respondent further answering says, said land was not surveyed until on or about the year A. D., 184 , and until that time, it was not known or ascertained that the improvement of the said Samuel Hemphill and Janes respectively would as they did fall upon the same quarter section of land; but it is not true that the said Hemp-

hill did not claim a right of pre-emption to the quarter section upon which by the public surveys his said improvement should be situated.

Respondent believes it to be true, that the sale of said improvement made by Janes to said Jones and his possession and cultivation thereof, was a notorious and public fact, and was known to respondent and said Hemphill, prior to the removal of said Hemphill to the said Republic of Texas, but it was not known that the improvement of the said Janes and Hemphill would both fall upon the same quarter section of land, until the making of such survey as before stated. Respondent admits that the purchase of said improvement by said complainant from said Janes, and the occupation and cultivation of the same, and the improvements, and the residence of said complainant, and his overseer, as herein before stated was for some years prior to 1843, a public and notorious fact, well-known to respondent, and he believes it probable, was also well-known to said Hemphill; but neither respondent nor said Hemphill knew that any part of the improvement so made by said Hemphill, and sold to this respondent as aforesaid, would fall upon the said quarter section, until the survey was made, as herein before stated; and for these reasons, true it is, that respondent did not give notice, either to said Jones or to said complainant, that he or said Hemphill claimed a pre-emption on said quarter section of land, and that all the improvements made on said land, were made prior to the survey, as aforesaid, and subsequent to the grant of said pre-emption of said Hemphill, as herein before stated.

Respondent denies that he acted in bad faith with complainant, or any one else, in acquiring his title to said quarter section of land, or that he fraudulently attempted to wrong or injure said complainant, or any other person, but that he acted throughout, for the purpose of saving his own improvement, upon said quarter section, as he lawfully and justly might do, and wholly denies that any such fraud was intended, as is evinced or made manifest by his said deposition for respondent, further answering by way of explication of the said deposition, as mentioned in said bill, says, that at the time the same was taken, the said land had not been surveyed, and consequently did not know that any part of said improvement sold by Janes to said complainant, would fall upon this quarter section of land, as it afterwards did, and for the same reason, could not tell with any certainty, at the time said depositions were taken, what quantity of prairie land he was entitled to, beyond a rough and indefinite calculation.

Respondent admits that the extract contained in said bill purporting to be an extract from a deposition given by him, he believes to be truly copied, and a correct extract from said deposition. And respondent further admits that a portion of the improvement sold by Jones to said complainant was situated upon said quarter section, but it was not known to be so situated, until said land was

surveyed as aforesaid, and said respondent denies that said quarter section was sold by said Jones to said complainant, but avers that said Jones sold to said complainant simply his improvement, and probably his right of pre-emption to that and several other adjoining quarter sections. Respondent says, that when he first went to Washington to prove up said pre-emption, that he was advised that the proper course to avoid all difficulty in relation to the matter, would be to notify said complainant of his intention so to do; and acting upon that advice he returned to Lafayette county, and where this respondent and said complainant both resided, but on inquiry found that said complainant had gone to Washington, and when respondent returned to Washington, said Wynn was present and engaged in proving up pre-emptions on lands in the same sections of country where the said quarter section recited in said bill is situated; and respondent believes said Wynn was present in the land office either personally or by attorney specially employed, and retained by him to attend to the proving up of such claims as he desired to have confirmed and passed, and also to defeat if possible any other claims which might be presented, and would conflict with his interests, but whether present at the time said respondent proved up his pre-emption or not, respondent avers that said complainant had notice that said pre-emption had been proven up on the next morning thereafter. Respondent positively denies that he practiced any fraud, secrecy or deception in relation to said pre emption, but it was all done fairly and openly in the same manner that complainant and others transacted their business in regard to pre-emption claims. Respondent avers that the said pre-emption of the said Samuel Hemphill, as proved up and established as aforesaid, was a just and valid one.

Respondent further answering, says, that at the time he purchased the improvement of the said Samuel Hemphill, a portion of which after the survey aforesaid, proved to be situated upon said quarter section as aforesaid, he took a bond or obligation from the said Hemphill, who bound himself to prove up and give respondent the benefit of any pre-emption he might be entitled to, under and virtue of any settlement or improvement. That after said land was surveyed, and the proper time had arrived to prove up said pre-emption he applied to said Hemphill who then lived in Texas, and required him to comply with the condition of his said bond, and said Hemphill being at that time disabled and in bad health, although he expressed a desire and willingness, said he was in such a situation, that he would run a great risk of losing his life in making the journey to the land Office in Arkansas, as he was not in a situation to undergo the least exposure, and as respondent was fearful that the time allowed by law for proving up said pre-emption might expire, as an inducement to said Hemphill to undergo the fatigue of the journey, and as said respondent considered the land of much greater value that any right of action he might have against said

Hemphill, in the event of his failure to comply with the condition of said bond, he agreed to pay him the sum of Two hundred dollars, when he, respondent should acquire a title, and obtain peaceable possession of said land, if he, the said Hemphill, would come to the State of Arkansas, and make the necessary affidavit for obtaining the pre-emption. Respondent does not know and cannot state, from information, belief or otherwise, whether said Hemphill ever was in Lafayette county, since the survey was made of the said land as aforesaid, and respondent admits that the affidavits of said Hemphill, Cryer and Waggoner in support of and upon which said pre-emption was granted, and correctly set forth and copied in exhibit A, No. 1, and referred to in said bill, and that said affidavits were respectively made at the time and before the officers, as shown in and by said exhibit, and respondent further admits that the said affidavit of the said Samuel Hemphill was made at the request and by the procurement, and under the circumstances hereinbefore stated and not otherwise. Respondent does not know from his own knowledge that said Hemphill ever traced the lines of said quarter section, after the same was surveyed, but respondent expressly and positively avers that a part of said improvement so made by said Hemphill and conveyed and sold to respondent was and is situated upon said quarter section, and respondent further avers that the face of the country was not so changed as to render it difficult for a person acquainted with the improvement at the time said Hemphill cultivated the same to recognize, distinguish and identify the same. Respondent says that said Cryer and Waggoner are both old residents of country, and have and do still reside in the neighborhood of, and have been acquainted with Hemphill's improvement from the time it was first settled up to this time, and that a few days before they made such affidavits they examined and traced the lines of said land and satisfied themselves that the improvement so made by said Samuel Hemphill and sold to this respondent was situated upon said quarter section of land; and respondent further says that said Cryer and Waggoner are two of the most respectable and credible citizens of Lafayette county, and have a sufficient knowledge of the survey of lands to trace lines with accuracy, and respondent according to his information and belief denies that they were mistaken, and avers that the said affidavits were correct in every particular.

Respondent says said Samuel Hemphill had more than attained the age of twenty-one years prior to the year, A. D., 1829, as he is informed and believes; and respondent is advised and insists that even if said Hemphill had not attained the age of twenty-one years, yet it could make no difference in regard to his pre-emption rights to said land.

Respondent further states that the said Samuel Hemphill as he is informed and believes truly was the head of a family during the years 1829 and '30, and denies that the land cultivated by him

in the year 1829, as aforesaid was cultivated by him as a member of his mother's family under her direction or for her use and benefit, or that the possession of the land so cultivated was the possession of his mother. Respondent says that at the time he purchased said improvement in Fisher's prairie from them until the survey was made as aforesaid he did not know what particular land was covered thereby, but avers that a portion of the improvement so purchased by him from said Samuel Hemphill, was and is situated upon said quarter section. That as the land had not been surveyed at the time said depositions had been taken, he could not state with any degree of certainty what quantity of land he would be entitled to under and by virtue of said improvement. Respondent denies that he now or ever has had exceeding four hundredacres of prairie land in said prairie excluding said quarter section as in said bill specified and set forth. Respondent further avers that the improvement purchased from said Sam'l Hemphill, and which has been in the continual possession of said respondent from the time said purchase extended on a portion of the North East quarter and South West quarter of section eighteen, all of which facts were well known to said complainant from the time of said survey, and were not known to respondent until that time, and complainant must have known, or had every reason to believe that respondent would attempt to hold his said improvement by virtue of his pre-emption right. Respondent further says, that if said complainant did as he has so often alledged in said bill expend his time, labor and money in making improvements on said quarter section he did so after said survey in his own wrong as he had every reason to believe that respondent would assert his claim to said land. Respondent avers that he purchased said improvement and the right of pre-emption long prior to the year 1839, as hereinafter stated, and respondent denies that said right of pre-emption had been abandoned. Respondent admits that inasmuch as he had purchased said improvement and pre-emption, and had extended said improvement since his said purchase and esteemed the land of great value, he, this respondent was, as lawfully might be the active agent in having said pre-emption proved up and established. Respondent believes it to be true, that after said Hemphill had proved up the pre-emption as aforesaid he returned to his residence in Texas, and so far as respondent knows wnet on in the even tenor of his way.

Respondent admits that the said witnesses, Cryer and Waggoner attended at the land office for the purpose of establishing and proving up said pre-emption at the request of this respondent, and that he, this respondent, paid to the Receiver the entrance money for said quarter section of land. Respondent admits that he made two applications to said Hemphill, one in person and one by agent, to comply with the condition of said bond as hereinbefore stated. That on the first application said Hemphill, owing to the bad condition of his health could not attend, and that upon the second appli-

cation this respondent made the agreement with said Hemphill, as hereinbefore stated, and none other. Respondent denies that he made any such representation as charged in said bill to induce said Hemphill, was deceived by any false representation made to him by this respondent, or induced thereby to believe that the cultivation and improvement would not interfere with the improvement of any other person, nor did this respondent make any false representation to induce said Hemphill to believe that said improvement was on said quarter section. Respondent admits that by the decision of the General Land Office, a patent was issued to him as the assignee of said Samuel Hemphill upon the ground that the pre-emption right of said Hemphill being under an Act prior in date and right to the Act under which said complainant claimed his said pretended pre-emption, a true copy of which decision is exhibited in and by said bill, and respondent, exhibits herewith a true copy of said patent marked exhibit Z, No. 1, and holds the original subject to the order of the Court, and instruction of the parties. Respondent admits that after the said entry was made he procured the usual transfer in said case from said Hemphill to himself and transmitted the same to the Land Office department whereupon said patent was issued, a copy of which is hereinbefoe made exhibit Z, No. 2, but respondent denies that he procured the same by fraud or that he purchased the same of the entry 80 made as aforesaid. But on the contrary thereof avers that he purchased said pre-emption right at the time in that respect hereinbefore mentioned, and procured the said transfer to be made in the manner usual in such cases.

Respondent admits it to be true, that he has instituted his action of ejectment on the common law side of this Court, for the recovery of said quarter section of land so covered by said patent as aforesaid.

And this respondent for further answer to said bill of complaint says: That he has been informed and believes it to be true, that Andrew Hemphill and Samuel Hemphill, respectively settled upon, improved, and cultivated portions of said prairie, some time in the year 1826, and each of them from thence until the time of respondent's purchase, as hereinafter stated, continued to live upon, hold possession of, and cultivate therein, said improvements, respectively, and each of them being over the age of twenty-one years, and the head of a family, actually resided upon, cultivated, and raised crops upon their said improvements, during the year 1829, and from thence, continued so to reside upon and hold possession thereof, without any intermission, cessation, or suspension, until the year 1833, by virtue of which cultivation, possession, residence, and improvement, they were each respectively entitled to pre-emption rights, under the act of Congress, for that purpose passed, on the 29th day of May 1830. That in the fall of the year, 1833, respondent came to this county and purchased the respective improvements and pre-emption rights, of said Andrew and Samuel, paying

therefor about the aggregate sum of $1600, and then and there, at the time of said purchase, took from each of said settlers, a bond, or written obligation, conditioned, that when the proper time arrived for that purpose, that they would prove up and establish their said pre-emption rights, for the use and benefit of respondent. That immediately after his purchase, respondent removed to, settled upon, and took possession of said improvements, and opened a large cotton farm, including said improvements, and has continually from thence, continued to hold possession of, and cultivate the same until the present day, except such part thereof as he has been dispossessed of by said complainant, as hereinafter stated. That at the time said respondent purchased said improvements, the improvement and farm occupied and cultivated by the overseer and slaves of said Janes, lay near by, and adjacent thereto, being the same farm and improvements afterwards sold by said Janes to said complainant: that none of the lands situated in said prairie, nor those adjacent thereto, were surveyed until some time in the year 1840; and until such survey, neither the said complainant nor this respondent, could ascertain or determine upon what particular sections and quarter sections, their respective farms would fall. That after said surveys were so made it appeared that a part of said complainant's improvement, and about 40 acres of the field cultivated by respondent, being part of the improvement so made by said Samuel Hemphill, fell, and was situated upon said north east quarter of section eighteen, and about 80 acres of the farm and improvement held and cultivated by respondent, and included within his cultivated field, fell and proved to be situated upon the south east quarter of said section eighteen, the part thereof inclosed, and cultivated by respondent, lying on the east side of said last mentioned quarter; that before said survey, the last half of said two quarter sections had been in possession of respondent, and was considered as part of respondent's farm, and the residue of said two quarter sections had as like manner, usually been tacitly deemed and considered as constituting part of complainant's, and after said land was surveyed, and the situation of said farm ascertained, respondent was willing that said two quarters should be equally divided by a north and south line, by which division each party would have secured the whole of his improvement, and respondent well hoped that a compromise and adjustment of that kind could have been effected; but after said survey, and before respondent had attempted to have a pre-emption proved up on either of said quarters, said complainant in fraud of the rights of this respondent, and without the knowledge or consent of respondent, presented his petition to the Congress of the United States, praying for the passage of an act, giving him the rights to enter about 25 sections of land, covering and including the whole of respondents farm and improvement, except about one quarter section, in and by which petition, and the letters and papers accompanying the same said complainant, falsely

and fraudulently represented, stated, and induced the members of Congress to believe that no person other than himself, occupied or owned any improvement, or had any right of preference, on any part of either of said sections, and that body being nulled and deceived by such false and fraudulently representations, actually passed the act, and granted the privilege; but fortunately for respondent, said complainant (although he intended to obtain respondent's farm) made a mistake in the description of the Townships and ranges, and having discovered his mistake, at the next session of Congress, said complainant applied to have said mistake rectified; but in the meantime, respondent had become apprised of said complainant's fraudulent proceedings in the premises, and having caused the facts to be properly represented, showing that almost the whole of respondent's farm was included within the boundaries of the land sought by said complainant, Congress refused to correct said mistake, and said complainant was thereby thwarted and defeated in his said fraudulent and dishonest scheme, to cheat and defraud respondent. That after said survey and the said fraudulent attempt on the part of said complainant to obtain the passage of the said act of Congress, and after the plat of said township had been returned to said land office before the same had been offered for sale, and when the proper time arrived for proving up pre-emptions in said township, respondent made application to said Samuel Hemphill to prove up and establish his said pre-emption, according to his said contract and obligation made as aforesaid, and for which he had been paid by respondent, many years before that time, and upon such application being made, said Samuel manifested willingness to do so, but as he had shortly before been severely injured by a fall from a horse, he said it would endanger his life to undergo the fatigue of a journey to Arkansas, and respondent being fearful that said Samuel might delay the matter until said lands should be offered for sale, respondent as a further inducement to him to undertake said journey, agreed that if he would immediately proceed to Arkansas, and comply with his said obligation, respondent whenever he should acquire a valid title to said north east quarter, and obtain peacable possession thereof, would pay him the further sum of $200. Respondent had long before that time, fully paid said Samuel for his said improvements and right of preference and said further sum of $200 was not considered any part of the price of said pre-emption; but respondent preferred to give said Samuel said further sum, rather than have any further delay, lest by his death or some further or increased disability to attend to business, or some other unforseen accident, said right might be forfeited by a failure to prove the same up within the time limited by law; and accordingly in due time, said Samuel proceeded and did come to Arkansas and prove up and establish his said right of pre-emption in the manner shown by the affidavits on file in the land office in that behalf, and thereupon said north east quarter was entered,

transferred and patented in the manner herein before stated; and respondent expressly avers that there was no fraud, accident or mistake in the issuance of said patent, or in any of the steps or proceedings taken or adopted to obtain the same, and that he is now the absolute owner of said north east quarter, both at law and in equity.

Respondent further answering, says that shortly before the said pre-emption was so established in the name of said Samuel, said complainant applied to said land office to prove up a pre-emption in the name of said Massach H. Janes, (who many years before that time had abandoned the United States, removed to and there resided in the said foreign republic of Texas, and had, as respondent has been informed, and believes, actually taken the oath of allegiance to the Republic of Mexico,) under the said pre-emption act of the 29th of May, 1830, and according to the proof then introduced by said complainant, upon said application, said land officers were willing and offered to grant a pre-emption in the name of said Janes under said last mentioned act, either upon said North East, or upon said South East quarter of said section 18; but said complainant made choice and elected to take and have a pre-emption granted to said Janes upon said South East quarter, which included about 80 acres of land which respondent then and for many years previous thereto, had enclosed and in cultivation, and thereupon said land officers granted and allowed the same upon said South East quarter, and said complainant now owns and holds possession of said South East quarter, the same having been proved up, entered, and paid for by said complainant (in the name of said Janes) for his (complainant's) own use and benefit, and afterwards transferred and patented to him; and at the same time said pre-emption was granted to said Janes upon said South East quarter, said land officers, upon the proof then introduced before them by said complainant by mistake, through the fraud practised there by said complainant and in total ignorance of the fact that any other person had an improvement upon, or was entitled to a right of preference in the entry thereof under any prior act, granted and allowed to said complainant in his own name, by virtue of his own pretended settlement and cultivation upon said North East quarter under the pre-emption act of 1838, but after the proof in support of said Samuel Hemphill's pre-emption was produced to said land officers, and they were fully advised in relation to the matter they cancelled and set aside the pre-emption so granted to said complainant, and allowed the pre-emption of said Samuel, as hereinbefore stated.

Respondent positively denies that said complainant ever gave him any notice whatever of his intention to attempt to prove up a pre-emption upon either of said quarter sections, but from said complainant's previous conduct in relation to the matter, and particularly from his fraudulent and deceptive attempt to obtain the passage of the said act of Congress as hereinbefore stated, for some

itme before said complainant so attempted to prove up said pre-emption, respondent was convinced and believed that said complainant would resort to any means or adopt any mode his own or the ingenuity of his advisers might snggest, (no matter how fraudulent, false, deceptive or dishonest the same might be,) to carry out and accomplish or further his design, to cheat and defraud respondent in respect to the lands aforesaid, and would take any advantage which fraud and dishonesty could bring to his aid.

Respondent in further answer states and charges that on the next morning after said pre-emption was granted to, and entry made in the name of said Samuel Hemphill, respondent and said complainant met in the said land office, and the Receiver of said office, in the presence of both, proposed that the dispute and difficulty existing between them in regard to said two quarter sections should be amicably adjusted and compromised by making an equal division of said two quarters by a north and south line, giving and allotting the east half of each to respondent, and the residue to complainant, by which compromise and division each one of them would have obtained secured and acquired title to the whole of the land covered by his improvements on said quarters, and although respondent was confident that he would hold said North East quarter and that the same was of much greater value than the other, yet, for the purpose of avoiding any further litigation or dispute with a neighbor, he at once expressed a willingness, and was then and there ready and willing to adjust and comprise the matter upon the terms proposed by said Receiver, and so stated to him ; but complainant could not brook the idea of being defeated in his long cherished design of cheating and defrauding respondent out of the whole of said two quarters, and thereby to deprive respondent of his valuable improvements thereon, not only rejected and refused to accept said proposition, but became and was very indignant thereat, swore he would have the whole or none, and immediately left the office.

That immediately after said pre-emption was granted in favor of said Samuel Hemphill, said complainant protested against the said decision of said Register and Receiver in granting and allowing the same, and in rejecting and cancelling the one claimed by him on the same tract of land, and appealed from their said decision to the Commissioner of the General Land, whereupon said appeal was granted, and all the papers, evidence and facts were transmitted to the General Land Office for a revisal of said decision, and said Commissioner afterwards upon such appeal after giving respondent and complainant both a full and fair hearing, and from a thorough investigation of all the facts and being fully advised in the premises sustained and in all things affirmed the decision of said district land officers and decided and determined that the said pretented pre-emption of said complainant's should be and the same was thereby rejected and cancelled, and that a patent should be issued to respondent for said N. E. quarter by virtue of the entry made under

the pre-emption of said Samuel Hemphill and the same was in pursuance thereof afterwards accordingly issued as hereinbefore stated and shown.

Respondent further says, that after said pre-emption was so proved up and allowed to said Samuel Hemphill, and after he had fully complied with the conditions thereof, respondent cancelled and destroyed the obligation executed by said Hemphill to him at the time he purchased said improvement and right of pre-emption, and the same cannot therefore be produced.

Respondent further states that a true copy of all the papers presented by said complainant to obtain said act of Congress, duly certified, will be hereinafter filed, marked Exhibit X. No. 2, and when so filed, the same is hereby prayed to be taken as part hereof. Said complainant has taken forcible possession of the improvement of said respondent upon said North-east quarter and still holds the same. This respondent answers the allegations contained in said bill, and makes the discovery thereby sought in respect of his own title to the land in controversy in this behalf, insisting and protesting that said complainant has not in and by his said bill made such a case or stated such facts as in any manner entitles him to any part of the discovery or relief thereby sought. That said complainant wholly fails to show any title in himself, and is therefore not in any wise entitled to any discovery in respect thereof, or relief against the title of this respondent—that this court is not invested with any authority, power, or jurisdiction to revise, set aside, or correct the decision of the Register and Receiver of the Land Office of the United States, at Washington, and that by the law of the land, the decision, adjudication and judgment of the said Register and Receiver in so granting and allowing the said pre-emption right to, and in the name of said Samuel Hemphill is final and conclusive and cannot be enquired into, or in any manner questioned, changed, modified, set aside or corrected by this court or any other tribunal; and so for the reasons aforesaid, and other reasons on the face of the said bill appearing, this defendant desires that it shall distinctly appear and be understood that he makes this answer protesting in manner aforesaid, and insisting and hereby claiming the like benefit and advantage in respect of the objections aforesaid, and on account and by reason of all other substantial defects of said bill, as if he had formally demurred thereto, and to that end respondent insists and submits that said bill be dismissed, and the prayer thereof denied, &c.

This defendant denies all manner of fraud, unlawful contrivance or confederacy wherewith he is in and by said bill charged: without this, that there is any other matter, cause or thing in said bill contained material or necessary for this defendant to make answer unto, and not herein and hereby sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge and belief of this defendant: all of which matters and things, this de-

fendant is ready and willing to maintain and prove as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

CURRAN & WATKINS,
HUBBARD & HEMPSTEAD,
For Def'ts.

County of Lafayette, S. Ct.

I, Josiah Garland do state on oath, that the facts contained in the foregoing answer, so far as the same are stated on my own knowledge are true, as therein set forth, and so far as the same are stated on the information of others, he believes them to be true as therein set forth.

J. GARLAND.

Sworn to and subscribed before me, }
this 8th day of July, A. D., 1847. }

JOHN WAGGONER,
J. P.

Amended and re-sworn in open Court, this 6th day of January 1848.

J. D. JONES,
Clerk.
By R. F. SULLIVAN,
Dep't.

Deposition of William H. Garland, taken by James H. Caruthers, Commissioner, on the 15th day of September, A. D., 1849, at the law office of James H. Caruthers, in the town of Lewisville, County of Lafayette and State of Arkansas.

Question 1st. Have you examined this map marked B. If so, does the black lines commencing on the river, in section 20, running West into section 19, thence North through section 18, represent correctly, the fence or inclosure of Garland's plantation, on Red River, in Fisher's Prairie, in Lafayette County, from 1842 to 1846?

Ans. It does.

Question 2. Does the yellow lines running in different directions through Garland's farm correct represent the ditches through said farm; also the boundary ditches, and the main leading ditches?

Ans. They do.

Question 3. Have you examined the map, marked C., and if so, does the yellow lines correctly represent the ditches now on the remnant of the plantation of said Garland, if so, have such ditches been obstructed, as represented on said map?

Ans. They do.

Question 4. Does the green lines South and West of section 17, correctly represent the present fence of Col. Wynn, and if so, has there been a ditch dug and an embankment thrown up.

Ans. It does; and there has been a ditch dug, and an embankment thrown up as represented by said green lines south and west, of section 17.

The further taking of depositions adjourned until the 17th Sept. 1849.

Question 5. Can you describe the present enclosure of Garland's plantation on map C. If so point out said inclosure on said map.

Ans. I can. The black lines commencing on the River in section 20, running thence west, about three hundred yards, thence north about the same distance, thence west, on the line of section 17, to the south-west corner of section 17, thence north on the line of section 17, in to the north-west quarter of section 17, thence a little south of east to the River.

Question 6. Did you attend before Justice Green of Sevier county, Arkansas, to the taking of the affidavit of Sam'l Hemphill to prove up a pre-emption on the North East quarter of section 18 of Garland's plantation in Fisher's prairie. If so, state when, and all that was said by Hemphill on that occasion.

Ans. I did attend before said Justice about the 1st of February, in 1843, to the taking of said affidavit for the purpose of proving up said pre-emption, and he stated while under oath, that if the map, which I exhibited to him was correct, he did cultivate a portion of the north-east quarter of section 18.

Question 8. What was done with the maps and affidavit to which you refer.

Answer. I delivered them to the Receiver at the Land Office at Washington, in Hempstead County, Arkansas.

Question 9. Did you endeavor to get said Hemphill to come down to Fisher's Prairie to examine the lines of said land, and did you offer to pay his expenses and for his trouble if he would come.

Ans. I did endeavor to get said Hemphill to come down to the prairie, and did offer to pay his expenses, and for his trouble.

Ques. 10. What did he say when you requested him to come?

Ans. He said he was unwell and not able to make the trip.

Signed, By WM. H. GARLAND.

The deposition of Morgan Cryer taken before the said Caruthers on the 18th Sept., 1849, at the same place:

Question 1. Have you examined the map marked B. If so, describe the enclosure of Garland's plantation on Red River, in Fisher's Prairie, in Lafayette county, Ark's., from 1837 to 1846.

Ans. I have examined said map marked B, and the black lines commencing on the River, and running thence west into section 19, thence north through section 18, correctly represent said enclosure

from 1837 to 1846, except that the line running north through 18, should run a little more east, and I think I can show precisely, how said line should run if I was on the land.

Question 2. Can you describe the various ditches running through Garland's plantation, prior to 1846. If so, describe said ditches on map B.

Ans. I can, and the yellow lines on said map, correctly represent all of said ditches, except the lines marked A and B, and if there is ditches on said lines so marked I do not know anything about them.

Question 3. Have you examined the map marked C. If so, describe the boundary or enclosure between Garland's and Wynn from 1848 to the present time.

Ans. I have examined said map marked C, and the black line commencing on the River in section 20, running thence nearly west, some three hundred yards, thence north about three or four hundred yards, thence west on the line of section 17, to the corner, thence north some three-quarters of a mile, correctly represent the boundary or enclosure between Wynn and Garland from 1848 to this time.

Question 4. Can you describe the ditches on Garland's plantation at this time. If so, describe said ditches on map C, and state whether they have been obstructed, when and where and how obstructed.

I can describe some of said ditches, and the yellow lines on map C, correctly represent said ditches at this time, except the line marked A, and I do not know anything about said ditch. And the ditches as they stood from 1837 to 1846, have been obstructed near the corner, between sections 17 and 18, by the throwing up of an embankment.

Question 5. Can you state whether Samuel or Andrew Hemphill, had any lands in cultivation on the South East quarter of section 18 prior to May, 1830.

Ans. I can. I believe they had land in cultivation on the South East of 18, but cannot state how much.

Question 6. Had Garland any land in cultivation on the South East of 18, prior to June, 1853. If so, how much.

Ans. He had, but cannot state how much.

Question 7. What was it worth per acre to prepare land, and put it in cultivation in Fisher's Prairie from 1835 to 1848.

Ans. I do not know.

Quest. 8. Was the farm of Samuel Hemphill in 1829 and 1830 longest east and west or north and south.

Ans. My impression is that it was longest east and west.

Quest. 9. How much land had Samuel Hemphill in cultivation on his improvement in Fisher's Prairie in 1829 and '30, and on what quarter section or sections was said improvement.

Ans. I suppose he had between between forty and fifty acres in

cultivation in 1829 and '30. A portion of said cultivated land was on the north east quarter of section 18, a portion on the south east quarter of 18, and the balance on the north-west and south-west of 17, said improvement being in four different quarter sections.

Question 10. Whose farm lay West of Samuel Hemphill's farm in the year 1829 and '30?

Ans. Massach Janes farm lay West of Hemphill's, in 1829 and '30.

Question 11. Whose farm lay West of M. Janes' farm in 1829 and '30?

Ans. The widow Jacob's.

Question 12. Was there a conditional line between the lands claimed by Janes and Hemphill. If so, state the direction that said line run.

Ans. There was a conditional line, and it run nearly North and South.

Ques. 13. Did Massach Janes ever claim any land East of said agreed line in Fisher's Prairie?

Ans. He did not.

Question 14. In what direction from the said Hemphill's house, was the well in 1829 and '30, and how far was said well from said house?

Ans. The well was about a North-west course, and about 8 or 10 steps from the house.

Question 15. Was the well used by Garland from 1840 to 1845, the same one that stood 8 or 10 steps from the Hemphill house. If not, state the direction of Garland's well, and the distance of said well from the old well.

Ans. The well used by Garland from 1840 to 1845, is not the same one that stood 8 or 10 steps from Hemphill's old house, and the well used by Garland from 1840 to '45, lay in a North-west direction from said old well, and at a distance of some seventy or eighty yards from the old well.

Question 16. When the old Hemphill mill was moved from the river bank, in 1836 or '37, and put up again, in what direction was it put up from Garland's farm?

Ans. It was put up North of Garland's farm.

Question 17. Who resided on the quarter section East of the one that Massach Janes lived on in 1833?

Ans. Andrew Hemphill.

Ques. Where did old Mrs. Hemphill and Samuel Hemphill reside in 1833?

They lived on the North-east fractional quarter of section 20, on the river, in Fisher's Prairie.

Question 19. When the line between section 17 and 18 was run by Charles E. Moore, in October, 1848, were you present on that day at the time the line was run, and did you see said surveyor Moore or John W. Cocke, or have any conversation with either of

them on the line between section seventeen and eighteen, on the day said line was run in Fisher's Prairie?

Ans. I was not present at the time the line was run by Moore, and I did not see him or John W. Cocke, on the line on that day, or at any other time on said line.

Question. At what place did you afterwards see said Cocke and Moore, and what was the conversation you had with them on that occasion?

Ans. I saw them at my house a day or two after they said they had run said line between 17 and 18.

(Adjourned until next day, Sept. the 17th, A. D., 1849.)

Ans. I stated to them, that there were men who knew the Eastern, Northern and Southern boundary of the Sam'l. Hemphill farm, and if they would get these men to go on said land, they could show them these boundaries, and by running West from complainant, they could ascertain certain whether the Hemphill improvement included a part of the North-east quarter of section 18, and I further stated, if they would make another survey and get these men to go with them, and by so doing. they could satisfy any body whether the Hemphill farm included a part of the North-east quarter of 18.

Question 21. Were there many mounds in the field of Sam. Hemphill in Fisher's Prairie in the year 1829 and '30. If so, was there any perceptible difference in said mounds.

Ans. There were a good many mounds in said farm, and there was no perceptible difference in them.

Question 22. What was the direction of Janes' house from Sam. Hemphill's in 1829 and '30.

Ans. About a North-western direction.

Question 23. In what year was it, that Jacob Buzzard and Fleetwood Herndon, collected cattle in Fisher's Prairie to furnish the Choctaw Indians?

Ans. I believe it was in 1833.

Col. Wynn by his attorney, James Burton objects to the testimony of Morgan Cryer, for the reason that he has been been examined before on some of these cases on the part of Jo. Garland.

Signed, M. CRYER.

The deposition of Thomas H. Edwards taken before the said Caruthers on the 18th day of September, 1849, at the same place.

Question 1. Where did you first become acquainted with Fisher's Prairie in Lafayette County, Arkansas. Did you ever live in said prairie. If so, state when, how long, who with, and your occupation?

Ans. The first time I ever saw it, was in 1842, the 15th day of November, and I lived with Col. Garland, the balance of that year and two years afterwards. I lived with Col. Wynn in the years 1847 and 1848. I was an overseer.

Question 2. Have you examined the map marked B? If so, describe the enclosure of Garland's plantation on Red River, in Fisher's Prairie, in Lafayette County, Arkansas, from the year 1842 to 1845.

Answer. I have examined said map, and the black line commencing on Red River on said map, and running thence west, some three quarters of a mile, thence north some three quarters of a mile, thence east to the River, correctly represent said enclosure from 1842 to 1845.

Question 3. Can you describe the various ditches in Garland's plantation? If so, describe them on the map.

Answer. I can. The yellow lines correctly represent all of said ditches up to 1845.

Question 4. Have you examined map marked C? If so, describe the present enclosure of Garland's plantation on said map.

Answer. I have examined said map, and the black lines commencing on the River, and running thence west some three hundred yards; thence north some two hundred and fifty yards, thence west one half a mile, thence north about three quarters of a mile, correctly represent the present enclosure of Garland's plantation.

Question 5. Can you describe the ditches on Garland's plantation on map C? If so, describe them; have said ditches been obstructed, by whom, and at what place, and how obstructed?

Answer. I can; and the yellow lines correctly represent the present situation of the ditches, and the ditches have been obstructed by the throwing up an embankment or levy by Col. Wynn, between him and Garland.

Question 6. Does the said embankment thrown upby Wynn, near the line of section 17, together with the stopping up of said ditches, greatly injure the farm of said Garland.

Answer. It throws a great deal of water on it.

Question 7. While you lived with the said Garland, did you keep open and cleared all of said ditches?

Answer. I did.

Question 8. How much land had Garland in cultivation on the N. E. $\frac{1}{4}$ of section 18, and the S. E. of qr. of 18, and on the North East of qr. of 19, and on the South West qr. of sec. 20?

Answer. He had in cultivation on the North East quarter of 18, about seventeen acres, and on the S. E. of 18 about 18 acres, and on the N. E. of 19, about 20 acres, and on the S. W. of 20 about 10 acres, in the year 1845.

Question 8. Have you ever examined the lines of the land, selected and bought by Garland from the State of Arkansas? If so, state if Wynn had any of said lands in cultivation, or any improvement on any part of said lands.

Answer. I have examined said lines and the lands bought by Garland from the State, and Wynn had none of said lands in cultivation, nor improvement on them.

Question 9. Did not Garland always claim said lands, from your first acquaintance with the land, and did he not put up a log cabin, as was customary at that time, in order to show his selection of said lands, and did he not cut timbers off of of said lands from the time you first knew Fisher's Prairie, up to this date.

Answer. He did.

Question 10. Is not the land bought by Garland from the State the only land he can get adjoining his lands in for timber, and has he not always forbid Wynn from cutting timber on the same?

Answer. Those lands are more convenient and the best timbered and he has frequently forbid Wynn from cutting timber on any of said lands.

Question 11. Were you present at the time the line was run at Charles E. Moore, in 1848, between sec. 17 and 18 in Fisher's Prairie? If so, state whether Morgan Cryer was there at the running of said line, or did you know of his having any conversation with John W. Cocke, at the running, and at ½ mile stake on that day?

Answer. He was not there that I saw, and he had no conversation with John W. Cocke, at the ½ mile stake that I know of.

Question 12. What was it worth to prepare and put land in cultivation in Fisher's prairie, from 1835 to 1845?

Answer. It would depend very much as to the manner it was put in cultivation.

Question 14. Were you present at the cut off on Red River when the deposition of Jack Bradley and others was taken before John Waggoner? If so, state the condition of Jack Bradley at the time his deposition was taken.

Answer. I considered him tolerably drunk.

(Signed) his THOS. ⋈ H. EDWARDS. mark.

Deposition of J. L. Howard taken before the said Caruthers, on the 18th day of September, 1849, at the same place.

Question 1. When did you first become acquainted with Fisher's Prairie in Lafayette County, Arkansas? Did you ever live in said Prairie? If so, state when, how long, who with, and your occupation?

Answer. I first became acquainted with Fisher's Prairie in 1839 and '40, and I lived with Col. Garland during those years and in 1845 and '46 I lived with Col. Wynn, during that time I was overseer for those two men.

Int. 2. Have you examined the map marked B. If so, describe the enclosure of Garland's plantation in Fisher's Prairie, in Lafayette County, Ark., from 1840 to 45.

Ans. I have examined said map, and the black lines commenc-

ing on the river, and running thence west about ¾ of a mile, thence east of north about ¾ of a mile, thence nearly east to the river, correctly represents said enclosure from 1840 to 1845.

Int. 3. Describe the various ditches on Garland's plantation, from 1840 to 1845.

Ans. The yellow lines on map B, correctly represent all of said ditches, except the ditch marked C, which lacked a few yards of running into the line ditch.

Int. 4. Have you examined map marked C. If so, describe the present enclosure of Garland's plantation, between him and Wynn, at this time.

Ans. I have examined said map, and the black line commencing on the river, running thence west about three hundred yards; thence north about the same distance; thence west ½ a mile to the corner; thence north about ¾ of a mile, correctly represents said inclosure at this time.

Int. 5. Describe the ditches on Garland's plantation at this time, and say if said ditches as they existed prior to the year 1845, have been obstructed, if so, how, when, and by whom.

Ans. The yellow lines correctly represent said ditches at this time, on said plantation, and all of said ditches as they existed prior to 1845, have been obstructed, except one, and I believe it is obstructed, but cannot state positively; said ditches were obstructed by being filled up, and by throwing up an embankment or levy. I do not know by whom said embankment was thrown up.

Int. 6. While you lived with said Garland did you keep open all of said ditches on his said plantation.

Ans. I did.

Int. 7. By whom was the bonndary fence described by you on map B, dividing the farm of Garland and Wynn built. Was it done by one or both.

Ans. I built and repaired all of said fence while I was overseeing for Garland.

Int. What became of said boundary fence if moved. By whose direction was it moved, and where was said rails moved to, and to put up.

Ans. I moved a portion of said fence, by the direction of Col. Wynn, while I was overseeing for him, and placed it near the line, between section 17 & 18, which formed Col. Wynn's line fence, between him and Garland. I suppose there is some six or seven hundred yards of said fence that I did not move.

Int. 8. At what time of the year was said fence moved by you from the original boundary.

Ans. It was in February, 1846.

Int. 9. Does the said embankment throwed up by Wynn, near the line of section 17 and 18, together with the stopping up of said ditches, greatly injure the farm of said Garland.

Ans. It does injure it.

Int. 9. How much land had Garland in cultivation on the N. E. ¼ of 18, and on S. E. quarter of 18, and on the N. E. of 19, and S. W. of 20 in 1845.

Ans. On the N. E. qr. of 18, about 18 or 20 acres; on S. E. qr. of 18, about 12 or 15 acres, on the N. E. qr. of 17, about something less than an acre, and on S. W. ¼ of sec. 20, about 7 or 8 acres, and upon the S. E. ¼ of 18, there appeared to have been more land in cultivation, all prior to 1845.

Int. 10. Have you ever examined the lines of the land selected and bought by Garland from the State of Arkansas, which were located on sec. 7 and 8. If so, state if Col. Wynn, ever had any of said lands in cultivation or any improvement on any part of said lands.

Ans. I have examined said line, and the land bought by Garland from the state, and Wynn had none of said land in cultivation, nor no improvement on said land.

Int. 13. Did not Garland always claim all of the lands east of the line above referred to.

Ans. He did, and if I was on the land, I could show all the lands claimed by Garland.

Int. 14. Was there a well dug by you in 1839 on Garland's plantation; was that the one used by Garland, and was there any other one near the residence of the said Garland, in 1847.

Ans. I dug a well on Garland's plantation in 1839, and there was no other well near that place, in the year 1847, that I know of, and it was the one used by Garland.

Int. 15. In what direction did Garland's mill stand from his farm.

Ans. About north.

Int. 16. Were you present at the time the line was run between sec, 17 & 18, by Charles E. Moore, in September or Oct., 1848. If so, state whether Morgan Cryer was there at the running of said line.

Ans. I was present, and if Cryer was there I did not see him.

Int. Who were the chain bearers when said line was run.

Ans. Myself and Col. Abrahams.

(*Cross Interrogatories by Wynn*)

Int. 1. How far was the well that you dug on Garland's plantation in 1839, from the old well.

Ans. A few feet. In digging the new one, I threw the dirt out of the new one into the old one.

Int. 2. Had the old well apparently been dug long.

Ans. The curbing was rotten, and made of common boards.

(Signed,) J. L. HOWARD.

The deposition of James Abraham taken before the said Caruthers, on the 19th day of September, 1849, at the same place.

Int. 1. When did you first become acquainted with Fisher's Prairie, in Lafayette County, Arkansas, and did you ever live in said prairie If so, in what years?

Ans. I went to Fisher's Prairie, in March, 1835 and lived in said prairie from that time to Jan. or Feb. 1837.

Int. 2. During the time that you lived in said prairie, were you on the farm af Jo. Garland, in said prairie. If so, state upon what quarter section did the said Garland reside.

Ans. I have been frequently on his farm in said prairie, during the time that I lived there, and he resided on the N. W. ¼ of sec. 17.

Int. 3. In what direction, and how far was the well used by Garland, in 1835, from the old houses in which he then resided?

Ans. The well was in about a North direction from said old house, and at a distance of about 100 yards.

Int. 4. When Garland's mill was moved in 1836 or '7, in what direction was said mill put up from his farm?

Ans. It was put up on the North part of his farm.

Int. 5. Were you present at the time the line was run between 17 and 18 by Charles E. Moore, in 1848, in Fisher's Prairie. If so, state who were the chain bearers and all the persons present, and in particular, if Morgan Cryer and John W. Cocke were present?

Ans. I was present at the time the line was run by said Moore, in the fall of 1848, between 17 and 18 in Fisher's Prairie, and myself and Mr. Howard were the chain bearers. There were present, Moore, Howard, Wm. Wynn, and Wm. W. Wynn, and Thomas H. Edwards, and if John W. Cocke or Morgan Cryer were there I did not see them.

Int. 6. Did you see Charles E. Moore, fix down the ½ mile stake, between section 17 and 18. If so, state whether or not the lands around said ½ mile stake, were in cultivation in the year 1835?

Ans. I saw Charles E. Moore either drive down said ½ mile stake or have it done, between sec. 17 and 18, and the lands around said stake I believe were in cultivation, in the year 1835.

(Signed,) JAMES ABRAHAM.

Deposition of John G. Fuller, taken before the said Caruthers, on the 19th day of September, 1849, and at the same place.

Int. When did you first become acquainted with Fisher's Prairie, in Lafayette County, Arkansas. Did you ever live in said prairie. If so, state who with, how long, and at what time?

Ans. I became acquainted with said prairie, some time in the fore part of the year 1833. I lived in said prairie, from May, 1838 to Jan., 1839, with Col. Garland.

Int. 2. Have you examined the map marked B. If so, describe

the enclosure of Garland's plantation between him and Col. Wynn, in Fisher's Prairie, Lafayette County, Arkansas?

Ans. In the year 1838, when I lived there, the black line commencing on the river, as represented on map B., running thence West, about three quarters of a mile, thence North, about the same distance, coraectly represents the Southern and Western boundary of said plantation, between him and Col. Wynn, as well as I can recollect.

Int. 3. Can you describe the various ditches on Garland's plantation on map B.?

Ans. I can, and the yellow lines on said map correctly represent all the said ditches except the ditches marked A. and B. These I do not know anything about.

Int. 4. Ban you describe all of the lands claimed by Garland, in the year 1838, on map B.?

Ans. I can. Garland claimed all of the land East of the North line between him and Col. Wynn, as represented on said map by the black line, and the line marked with dots.

Int. 5. Did Garland claim the land East of the line marked with dots on map B. If so, did he forbid all persons from cutting timber East of said line, and did you cut and split rails on Col. Wynn's lands, on account of his oserseer having cut and split rails East of said line on the land claimed by Garland?

Ans. He did claim the land East of the dotted line. I do not know anything of his forbidding persons from cutting timber on said land. When I went to live with Col. Garland, he told me that Wynn's overseer had cut and split some rails East of said line. Col. Garland told me that it was done during his absence, and that upon his return, he complaained to Wynn's overseer, and that said overseer agreed, that he Garland, might cut and split as much timber on the lower part of his, Wynn's plantation, to pay him for what he had taken East of said line, and I did go, and cut and split said rails by the consent of Wynn's overseer.

Int. 6. On what part of Garland's plantation, was his mill, in 1838?

Ans. It was on the Northern side.

(Signed,) J. G. FULLER.

(*For map B., see original, page* 445.)

This is paper or map marked B, referred to in the Deposition of William Garland hereto annexed.

(Signed,) WILL. H. GARLAND.

Map B.

Showing situation of Garland's & Wynn's plantations from 1836 to 1846, and Ditches dug in 1836 on their agreed lines and others dug in 1838, 1839 and 1840.

"This is Map marked B, referred to in the deposition of Morgan Cryer, Thos. H. Edwards and J. L. Howard and J. G. Fuller, hereto annexed.

Signed,

M. CRYER.

his
THOMAS ⊢ EDWARDS.
mark.

J. L. HOWARD.

J. E. FULLER.

J. C. CARUTHERS,
Commissioner.

The small black line beginning on the river in section 20, and runs Wt. into sec. 19. thence due No. through sec. 18 represents the fence on the agreed line (built entirely by Garland.)

The green circle in sec. 17 represents a small Cypress lake in Garland's field.

The yellow lines represent ditches and the one commencing on sec. 20 and runs into sec. 19 was dug by Garland precisely on the line agreed to by Garland and Wynn in 1836. See J. A. Bryant's certificate marked B, June, 1836, also his and Taylor's dep'ns. the other yellow marks another ditch dug in Garland's farm and lead into said agreed or line ditches and thence into the main large and joint ditch, commencing at or near the corner of Garland's line ditch, in sec. 19, and runs south into the swamp, low timbered lands. The ditch beginning in sec. 19 and runs No. through sec. 18 was dug by Wynn on the agreed line established for many years by Massac Jones and Matlock and so continued by Hemphills, and agreed to by Garland and Wynn in 1836. Bryant and Tally's dep'ns., see. The black dots through the centre of the No. E. & So. qrs. of sec. 7 shows Garland's state location corresponds with Massac Jones old (Mexican location of a leagued and Lalue) agreed line and further shows that West of said Jones' lines, Garland did not claim or locate, ☞ and made his state location by legal subdivisions No. & So. (see Law,) and instructions to register and receiver.

STATE OF ARKANSAS, }
County of Lafayette. }

I, Alexander Byrne, Clerk of the Circuit Court, within and for the county and State aforesaid, do hereby certify that the foregoing 55 pages contain a full, true and complete transcript of the second deposition of Morgan Cryer, and the depositions of William H. Garland, Thos. H. Edwards, Joshua L. Howard, James Abraham, and John G. Fuller, and of the plat made part thereof, taken and read in evidence on the part of Josiah Garland, in the Circuit Court

This is map marked C, referred to in the deposition of Morgan Cryer, Thos. H. Edwards, and J. L. Howard, hereto annexed.

(Signed) M. CRYER.
his
THOMAS ⋈ EDWARDS.
mark.
J. L. HOWARD.

J. H. CARUTHERS,
Commissioner.

The black lines beginning on the River in Sec. 20 and runs west into sec. 19, represents the fence made by Garland on the line agreed to by him and Wynn as a part of the line between them in 1836. The line turning No. and going through sec. 18 was a fence, also built by Garland on the line agreed to by him and Wynn in 1836. ☞ See Bryant and Taley's depn's. The green line beginning in sec. 20 and runs west on the line of sec. 17, thence north in the line between sec. 17 and sec. 18, represent ditches dug by Wynn, the dirt of which was thrown out towards the line of sec. 17, which formed a broad and high embankment, or levy, at which point all the former ditches dug by Garland through his plantation, were stopped up and closed, which flooded his farm and done great damage in the years 1848 and 1849.

The red dots commencing in corner of sec. 17 and running east to ½ mile stake, then south one half mile to head of lake, denote a ditch dug by Garland in 1848 and 1849 to try and drain the water off his farm, which was flooded by Wynn's ditches and embankments, but done no good at all. Black dots in sec. 7 show a part of Garland's state location on N. E. and S. E. qrs.

STATE OF ARKANSAS, }
County of Lafayette. } *ss.*

I, James M. Montgomery, Clerk of the Circuit Court for the county of Lafayette aforesaid, do hereby certify that this paper is a true and correct copy of the original map marked C, referred to in the deposition of Morgan Cryter, Thomas H. Edwards, Joshua L. Howard and William H. Garland in the case of Josiah Garland against William Wynn for title to land, which has been tried in this Court, and now pending in the Supreme Court of Arkansas.

In testimony whereof, I have hereto set my hand as Clerk, and affixed the seal of said Court at my office, this 25th day of June, 1855.

[SEAL.]

JAMES M. MONTGOMERY,
Clerk.

And afterwards to wit—on Saturday, the said 4th day of August, A. D., 1855, were the following proceedings, to wit.

This cause came on to be heard upon the transcript of the record of the Circuit Court of Lafayette County in Chancery, and was argued by the solicitors of the parties, on consideration whereof it is the opinion of the Court that there is error in the proceedings and decree of said Circuit Court in Chancery in this cause, in this: That said Circuit Court erred in dismissing the bill of the complainant therein, and dissolving the injunction granted him, and thereupon awarding damages against him on such dissolution.

It is therefore ordered, adjudged and decreed that the decree of said Circuit Court in Chancery in this cause be, and the same is hereby for the error aforesaid, reversed, annulled, and set aside with costs.

And this court proceeding to make such decree in the premises as the court below ought to have made, doth order, adjudge and decree as follows, that is to say,

That upon the payment by the said William Wynn to the said Josiah Garland of the sum of two hundred dollars with legal interest thereon from the 10th day of January, A. D., 1844, (the date of the patent to said Garland for the land in controversy,) until such payment, or upon legal tender thereof, the said Josiah Garland do convey to said William Wynn by deed of conveyance and quit claim the said North-east quarter of section eighteen, in township sixteen, South of range twenty-five West, of the fifth principal meridian, South of Red River and in the County of Lafayette, with all and singular, the hereditaments and appurtenances thereof, and that in case of his failure or refusal so to do, after payment of said money and interest, or tender thereof and deposit of the same in this Court with the Clerk of this Court, this decree do operate such conveyance as of this date, and said tract of land, with the hereditaments and appurtenances do pass thereby to and vest in said William Wynn and his heirs forever.

And the court here doth further order, adjudge and decree that such conveyance or investiture of title by this decree, shall have relation to said 10th day of January, A. D., 1844, and shall pass to and vest in the said William Wynn or his heirs, all the title which by the patent aforesaid passed to and vested in the said Josiah Garland: that the said Josiah Garland do deliver to said William Wynn the said patent upon the payment or tender aforesaid; and that the said Josiah Garland and all his heirs, executors and administrators, agents, solicitors and attorneys, be and they are hereby upon such payment, or tender, peremptorily and perpetually injured, to proceed against said William Wynn, at law for the possession of said land or any part thereof, under said patent or under the judgment by said Josiah Garland obtained against the said William Wynn, in his action of ejectment for said lands, in the Lafayette Circuit Court, or otherwise howsoever.

It is further ordered and decreed that said appellant recover of said appellee, all his costs as well in said Circuit Court, as in this Court in this cause expended, and have execution thereof, as upon judgments at law: and that this decree be certified to said Circuit Court, in Chancery, to be there entered up as the decree in this cause.

And afterwards, to wit: on the 13th day of August, A. D. 1855, the said appellee presented to the Clerk of said Supreme Court, a writ of error issued out of he office of the Clerk of the Circuit Court of the United States, for the Eastern District of Arkansas, for the removal of this cause to the Supreme Court of the United States, and at the same time filed in the office of said Clerk of said Supreme Court a copy of said writ of error, endorsed "for the above named William Wynn, defendant in error," which is in the following words:

UNITED STATES OF AMERICA, *ss.*

[L. S.] The President of the United States to the Honorable the Judges of the Supreme Court of the State of Arkansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, between William Wynn, appellant, and Josiah Garland, appellee, on appeal from a decree of the Circuit Court of Lafayette County, in Chancery, a manifest error hath happened to the great damage of said appellee. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf do command you if judgment be therein given that then under your seal distinctly and openly you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the said Supreme Court, this 13th day of August, A. D., 1855, and the 83d year of American Independence.

WM. FIELD,
Clerk of the Circuit Court of the U. S. for Eastern District of Ark.

And afterwards, to wit: on Friday the 17th day of August were the following procedings, to wit:

On motion of the appellee, by his solicitor, it is ordered that he

enter into a bond in the penalty of five hundred dollars to stay proceedings under the decree of said Circuit Court in Chancery, reversed by this Court and decree entered herein, and all further proceedings in this cause in the Supreme Court of the United States, in writ of error, that the time for entering into such bond be extended to the first day of November next, and that the same may be approved by the Hon. E. H. English, Chief Justice of this Court.

And Afterwards, to wit: on the first day of November, A. D., 1855, the said appellee filed in the said cause his bond, in the following words:

Know all men by these presents that, I, Josiah Garland as principal, and James Trigg, as his securities are held and firmly bound unto William Wynn in the sum of five hundred dollars, lawful money of the United States. To the payment thereof, well and truly to be made to them, their executors, administrators or assigns, we bind ourselves, and one and each of our heirs, executors and administrators jointly and severally, firmly by these presents, sealed with our seals and dated this 28th day of August, A. D., 1855.

But upon the following condition, that, whereas, the above named Josiah Garland hath prosecuted a writ of error to the Supreme Court of the United States to revise the judgment rendered in the above entitled suit, by the Supreme Court of the state of Arkansas. Now therefore if the said Josiah Garland shall prosecute his said writ of error, to effect and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void, but otherwise the same shall be and remain in full force and virtue.

J. GARLAND, [SEAL.]

JAMES TRIGG, [SEAL.]

Sealed and signed in presence of

HENRY LANDS.

Upon which was the following endorsement:

November 1st, 1855, I, Elbert H. English, Chief Justice of the Supreme Court of the State of Arkansas, hereby approve the within bond and the securities therein as sufficient.

E. H. ENGLISH.

In testimony that the foregoing four hundred and fifty three pages contain a full, true, and complete transcript of the record of said Supreme Court, in said cause—except the briefs of counsel and the opinions delivered in said cause.

[SEAL.] I, Luke E. Barler, Clerk of said Supreme Court, have hereunto set my hand and affixed the seal of said Court, at my office, in the city of Little Rock, this 30th day of November, A. D. 1855.

L. E. BARLER,
Clerk.

UNITED STATES OF AMERICA, ss.

THE PRESIDENT OF THE UNITED STATES

[SEAL] To the Honorable Judges of the Supreme Court of the United States, Greeting:

Because in the record and proceedings as also in the rendition of a plea which is in the said Supreme Court before you between Wm. Wynn, Appellant, and Josiah Garland, Appellee, on appeal from a decree of the Circuit Court of Lafayette County in chancery, a manifest error hath happened to the great damage of the said Appellee.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then render your seals distinctly and openly you send the record andproceedings aforesaid with all things concerning the same to the Supreme Court of the United States together with this writ so that you have the same at Washington on the first Monday of December next in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the said Supreme Court, this 13th day of August, A. D. 1855, and the 80th year of American Independence.

WM. FIELD,
Cl'k of the Circuit Court of the U. S. for East'n. Dist of Arkansas.

I, E. H. English, Chief Justice of she Supreme Court of Arkansas, do allow the within writ of error, this 13th day of August, 1855.

E. H. ENGLISH,
Ch. J.

STATE OF ARKANSAS,

I, Luke E. Barler, Clerk of said Supreme Court of said State, do hereby certify that I have made out and certified to the Supreme